TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 334.

THE ONONDAGA NATION; TE-HEE-HA, DAYGACHE-HAY-QUA, SHO-HEH-DO-NAH, HA-ON-WEH-GO-WAH, AND JARVIS FARMER, ONONDAGA INDIANS; SHONG-OH-GO-AH, A SENECA INDIAN; HA-JA-AH-OH-WAH, A CAYUGA INDIAN, AND THE UNIVERSITY OF THE STATE OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

JOHN BOYD THACHER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED FEBRUARY 4, 1907.

(16,294.)

(18,394.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 234.

THE ONONDAGA NATION; TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, SHO-HEH-DO-NAH, HA-ON-WEN-GO-WENLE, AND JARVIS FARMER, ONONDAGA INDIANS; HO-DO-OH-GO-AH, A SENECA INDIAN; HA-JA-AH-GWYSH, A CAYUGA INDIAN, AND THE UNIVERSITY OF THE STATE OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

JOHN BOYD THACHER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 10, 1902.

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In the Court of Appeals of the State of New York.

THE ONONDAGA NATION; TE-HES-HA, SAY-HAQUE, HOS-HAY-QUA, Sho-heb-do-nah, Ha-on-wen-go-wenle, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs, Appellants,

against

JOHN BOYD THACHER, Defendant, Respondent.

Papers on Appeal.

As-que-sent-wah (Edward Winslow Paige), attorney for plaintiffs-appellants.

John A. Delehanty, attorney for defendant-respondent.

Statement required by Rule 41.

This action began by the defendant's appearance ninth of October, 1897. It was originally brought by the Onondaga Nation and Te-hes-ha, an Onondaga Indian.

By order made twentieth December, 1898, Sayhaque, Hos-hay-qua, Sho-heh-do-nah, Ha-on-wen-go-wenle and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian, Ha-ja-ah-gwysh, a Cayuga Indian, and the University of the State of New York, were made additional plaintiffs. 2a

There has been no other change of parties.

The action was tried at a Special Term, at Syracuse, without a jury, twenty-second of December, 1898, and resulted in a judgment dismissing the complaint. From this plaintiffs appeal.

3a

SUPREME COURT,

ONONDAGA COUNTY.

THE ONONDAGA NATION and TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all of the HO-DE-NO-SAU-NEE,
Plaintiffs,

against

JOHN BOYD THACHER,
Defendant.

Plaintiffs show to the Court, on information and belief,—the plaintiff Te-hes-ha on behalf of all others of the Ho-de-no-sau-nee as well as on his own behalf:

That long before Hendrik Hudson sailed up North River there were and still are five nations of Indians, which then lived upon that part of what is now New York which they called the Highest Land on Earth, being that portion of the earth's surface extending from what is now Schenectady nearly to the Niagara River. They were called by themselves, according to the human being whose writing about it is, so far as we know, the first, Ageoegomie (or Kajinga), Onneyatte, Onaondage, Koyuckure and Sehenehalaton, but to beings who have used English

speech they have been and still are called, the names coming in the same order as above, Mohawks, Oneidas, Onondagas, Cayugas and Senecas. These five nations were united into what is usually called by the human beings who write about them, a league, of which one Hiawat-ha, an Onondaga by birth, but a Mohawk by adoption, was the founder. They were called by themselves "Ho-de-no-sau-nee," which means "People of The Long House," of which the Mohawks, at what is known now as Schenectady, where Hiawat-ha lived, kept the eastern door, the Senecas the western door and the Onondagas, in the Onondaga Valley, where they, being the plaintiffs, still live, the central council fire. They had no written language and their way of keeping the memory of things which happened was by the use of belts made of wampum, which had been invented by the said Hiawat-ha in this way: As he came east from the Onondagas to the Mohawks, stopping upon the shore of Oneida Lake, he strung together a quantity of small shells to remind him of the different things which he wanted to say when he reached the Mohawks. From that time record was made by the delivery of wampum belts, and those of the Ho-de-no-sau-nee, as well as those of the Onondaga Nation, were deposited with the latter as the keeper of the Central Council Fire, and by it entrusted to the keeping of an officer by it appointed for that purpose and called in English the "Wampum-keeper."

In the year eighteen hundred and ninety-two, the wampum which had thus been accumulating since the time of Hiawat-ha, was in the posses-

sion of one Thomas Webster, the then wampum- 7
keeper, and in that year one Carrington, being
then in charge of the Indian part of the United
States Census for New York, induced the said
Webster to deliver to him, the said Carrington,
the said wampum, for the doing of which the
said Carrington paid to the said Webster the
sum of eighty-five dollars. That thereupon the
said Carrington assumed or attempted to sell the
said wampum to the Reverend Doctor Oliver
Crane, of Boston, for which the said Reverend
Doctor paid to the said Carrington the sum of
three hundred and fifty dollars. That early in 8
the year eighteen hundred and ninety-three, one
Sanborn, hereinafter mentioned, applied to one
Donald McNaughton and the defendant to sell
to the State of New York four of the said
wampum belts, being the four belts hereinafter
described, said McNaughton and the defendant
being then two of the Managers for New York
of the World's Fair or Columbian Exposition,
for five hundred dollars, saying that the afore-
said Reverend Doctor had been offered eight
hundred dollars for them by Yale College, but that 9
as they came from the New York Iroquois, the
Ho-de-no-sau-nee meaning, he, the Reverend
Doctor, "felt" that they should be the property
of the State of New York, and because of that
feeling was willing to sell them for five hundred
dollars to the State of New York, thus sacrificing
three hundred dollars to that feeling. The de-
fendant, expressing to the said McNaughton the
opinion that they had no appropriations from
the State which they could use for that purpose,
paid the five hundred dollars himself and re-

ceived the following described four belts from the Reverend Doctor, through the said Sanborn, and still has them.

That on the twenty-first day of December, eighteen hundred and ninety-six, the defendant wrote to the Secretary of the Board of Regents of New York a letter of which the following is a copy:

"CITY OF ALBANY,
"MAYOR'S OFFICE,
"ALBANY, December 21, 1896.

"ASSIDUITY.

"JOHN BOYD THACHER,
"Mayor.

"MELVIL DEWEY, Esq.,
"State Capitol,
"Albany, N. Y.

"DEAR MR. DEWEY:

"Your favor of December 19, 1896, is received. The wampum exhibited in the Government building and in the space allotted to "New York State, is my own personal property. The big piece was made to commemorate the union of the Five Nations and is "contemporaneous with Hiawatha. I think "you must be referring to some other wampum "to which I have seen allusions in the public "press. Some woman is said to have made a "collection which she is proposing to place on "exhibition, but I have no knowledge of any "interesting or valuable pieces which she possesses. The Onondaga tribe still possesses "two pieces of great historical interest, but the "tribe has parted with the most interesting of "its relics.

"Yours,
"JOHN BOYD THACHER."

On the twenty-sixth of December, eighteen hundred and ninety-six, the defendant sent to Mr. Dewey a letter of which the following is a copy: 13

"CITY OF ALBANY,
"MAYOR'S OFFICE,
"ALBANY, December 26, 1896.

"ASSIDUITY.
"JOHN BOYD THACHER,
"Mayor.
"Prof. MELVIL DEWEY,
"Board of Regents,
"Albany, N. Y.

DEAR MR. DEWEY: 14

"If you will refer to page 84 of the printed "report of the Board of Managers of the New "York Exhibit, you will see that the piece of "wampum known as the Washington Belt, was "exhibited by me, and by referring to page "495, you will perceive that the original piece "of wampum made to commemorate the con- "federation of the five tribes was also exhibited "by me. I have two other pieces of historical "interest. At the time my attention was called "to this, it was the opinion of Mr. McNaugh- "ton, then Chief Executive Officer of the Board, 15 "and myself, that the Board had no right to "purchase the wampum with moneys appropri- "ated under the Act. I, therefore, made the "purchase myself. The financial report, be- "ginning on page 578, covers all details of ex- "penditure, and will disclose the fact that the "State never expended a dollar for the wam- "pum. Certain sums were appropriated for "the purchase of material with which the "Indians wrought out the exhibits for sale in "order that they might maintain themselves in

16 " Chicago, but an examination of the accounts
" will show that this expenditure was for raw
" material, such as straw, ribbons, etc. I make
" this statement so that you can fully under-
" stand the matter, and explain to Mrs. Con-
" verse, or anyone else interested in the subject.
" The Washington Belt is most interesting al-
" though far inferior in historical interest to the
" Hiawatha Belt.

" Yours,

" JOHN BOYD THACHER.

17 " MORRIS."

The title of the report referred to in the last above letter is as follows:

" NEW YORK AT THE WORLD'S COLUMBIAN EXPOSITION, 1893 "

(Senate Document Number 86 of 1894),

being a " Report of the Board of General Man-
" agers of the Exhibit of the State of New York
" at the World's Columbian Exposition." It was made to the Governor of New York, eighteenth of April, 1894, and signed by, among others, the defendant.

18 At page 495 of the print it contains the following:

" REPORT ON THE NEW YORK INDIAN EXHIBIT.
" By REV. JOHN W. SANBORN, Director.

" When the Dutch settled New Amsterdam
" in 1614 they found a Republic in the wilder-
" ness whose Constitution and laws were free
" from complications, which have so often led,
" among other races, to conflict—a Constitution
" framed to prevent political corruption, and
" which achieved, in the hands of its founders,

"eminent success in that important particular. 19
"The confederacy was in so complete a state
"when New York was founded that historians
"are justified in their conclusion that it had been
"previously in successful operation for many
"years. The Iroquois were called the Five
"Nations, and included the following tribes:
"Mohawks, Onondagas, Senecas, Oneidas and
"Cayugas. Their federal arms consisted of a
"bear, a deer, a wolf, a turtle, and a beaver.

"The original piece of wampum made to com-
"memorate the confederation of the five tribes,
"and which, therefore, antedates the Colum- 20
"bian discovery, is owned by Hon. John Boyd
"Thacher, of Albany, N. Y., and during the
"exposition was exhibited in the Government
"Building."

At page 496 of the print is the following:

"The league" (the above-named "republic"
and "confederacy" meaning) "was a union of
"five tribes made up of clans, all forming one
"government, each tribe having local authority
"like our individual states. There was a gen- 21
"eral council of Sachems, fifty in number, of
"equal rank and authority. This council had
"supreme power in matters pertaining to the
"league. The fifty Sachems held office perpet-
"ually. They had power to fill vacancies in the
"clans by elections but only on the nomination
"of the eldest women of the clan. These
"Sachems could depose a chief for cause, but
"they could not invest a Sachem with office;
"the general council did that. The Sachems of
"any tribe, with the war chiefs of that tribe,

"formed the council of the tribe and had au-
"thority similar to that of a State Legislature.
"All public acts became so only by the unani-
"mous decision of the league. The Sachems
"voted by tribes in the general council; thus, a
"small tribe had as much power as a large one.
"The council of each tribe had power to con-
"vene the general council, but the general coun-
"cil had not power to convene itself. The ora-
"tors of the people had perfect liberty to discuss
"public questions before the general council, but
"only the general council could render a decis-
"ion. Such, in brief, are the characteristics of
"the famous league of the Iroquois."

At pages 83 and 84 of the print, is the following:

"GOVERNMENT BUILDING."

"In the rotunda of the Government Building
"were thirteen large panels which were at the
"disposal of the thirteen original States for a
"display of colonial and historical relics and
"curios. New York's was especially attractive
"in interesting relics owing to the broad and
"rich domain of early New York history and to
"the exertions and influence of Mrs. Jones, of
"the Board of Women Managers, and Mr.
"Thacher, of the Board of General Managers,
"in securing the loan of articles for the exhibi-
"tion, and in bringing many famous mementoes
"from their hiding places."

(Page 84): "Prominent among the articles
"exhibited were the Washington relics from the
"State Library, autographs of the Presidents
"and the Signers of the Declaration of Inde-

"pendence, original model of Fulton's 'Cler- 25
"mont,' and the wampum belt commemorative
"of the first treaty and alliance of the Six Nations
"of New York, and now in the possession of
"Hon. John Boyd Thacher, of Albany."

That on the seventh day of March, 1893, the said Sanborn wrote and sent to the aforesaid Reverend Doctor, and to the wife of the latter, a letter of which the following is a copy, and which enclosed a paper writing, of which what immediately follows the copy of the letter is a 26 copy:

"WORLD'S FAIR.
Office of
JOHN WENTWORTH SANBORN,
Director-in-Chief
of the
Indian Exhibit of the State
of New York
at the
World's Columbian Exposition.

"THE CAPITOL, ALBANY, N. Y..... 189...
"NAPLES, N. Y., March 7, 1893.

"DEAR FRIENDS, 27
"DR. AND MRS. CRANE:

"The precious wampum came in good
"order on Saturday and will soon be shipped
"with our other curiosities to Chicago, and will
"add very much to the interest of the N. Y.
"Indian Exhibit. I will see to it that the de-
"scriptions are in larger type, and printed in fine
"style, giving the history of the past and the
"recent history as well, so as to set forth all the
"interesting facts in connection with the wam-
"pum.

28 "I enclose a form of receipt which, on receipt
"of the money due you, you may if you please
"sign unless the Senator should make out a
"form. It will not be necessary to make two
"copies except for historical interest.

"Concerning my type-writer, I would say it is
"a Remington, No. 2, and works perfectly and
"rapidly.

"I am to have a picture of these wampums
"taken, and engraved for insertion in my His-
"tory of the Six Nations, and I shall there give
"the history of it and make note of our purchase
29 "of it from you and Mrs. Crane. I am almost
"engulfed with work, but it is a pleasure to stop
"to write to you.

"Sincerely yours,
"JOHN W. SANBORN.

"P. S. I did not date the receipt. I will
"leave that to you to do when the money arrives.

"Yours,
"J. W. S."

"RECEIPT FOR WAMPUM."

30 "WORLD'S FAIR.
Office of
JOHN WENTWORTH SANBORN,
Director-in-Chief
of the
Indian Exhibit of the State
of New York
at the
World's Columbian Exposition.

"THE CAPITOL, ALBANY, N. Y.,.....189..

"RECEIVED FROM Hon. Donald McNaughton,
"Chief Executive Officer of The Board of
"General Managers of the New York Exhibit

" at the World's Fair, and John Wentworth 31
" Sanborn, Director-in-Chief of the New York
" Indian Exhibit at the World's Fair, acting for
" the State of New York, Five Hundred Dol-
" lars, ($500.00) for one case of four Wampum
" Belts, as follows, viz: One Belt of dark
" wampum beads representing the Confedera-
" tion organization of the Five Nations under
" Hiawatha; One Belt representing the First
" Treaty stipulation between the Six Nations
" and General George Washington, picturing in
" Wampum bead-work the Council House,
" General Washington, the O-do-ta-ho, or Presi- 32
" dent of the tribes, and thirteen representatives
" of the Colonies; also two fragments of other
" Belts, one representing the first approach to
" the Indians of the 'People with white faces,'
" and the other a narrow Belt representing the
" unity of the Five Nations."

In the year seventeen hundred and thirteen the Tuscororas, another and kindred Indian nation, were admitted into the league, and thus became one of the Ho-de-no-sau-nee, or Six Nations, and have ever since continued to be 33 and still are so. That no consent or authority was given to the said Webster to sell or part with any of such wampum by the aforesaid Ho-de-no-sau-nee, or Six Nations, or by its senate or council, or by any one of the said Six Nations or the council of any of them, or any one in authority among them, and particularly by any of the plaintiffs, and that the wampum hereinafter described was then and still is the property of the said Ho-de-no-sau-nee, or Six Nations, and not of any one of them or of the said Web-

ster; and the defendant, at the time he paid the money as aforesaid, knew or believed that the wampum belt first hereinafter described "was made to commemorate the union of the" aforesaid "Five Nations" and "was contemporaneous with Hiawat-ha," and that it had once been the property of the Ho-de-no-sau-nee. It was that fact, so believed by him, which gave to it an historical interest which made it of value in his eyes.

And that the said wampum belt first hereinafter described "was made to commemorate the union of the" aforesaid "Five Nations and" was "contemporaneous with Hiawat-ha," and had once been the property of the said Ho-de-no-sau-nee.

That the defendant, at the time he paid the money as aforesaid, knew or believed that the belt secondly hereinafter described was made to commemorate a treaty made between the Ho-de-no-sau-nee, or Six Nations, and General Washington, and that it had once been the property of the Ho-de-no-sau-nee. It was that fact, so believed by him, which gave to it an historical interest which made it of value in his eyes.

And that the said wampum belt secondly hereinafter described was made to commemorate a treaty made between the Ho-de-no-sau-nee, or Six Nations, and General Washington, and had once been the property of the Ho-de-no-sau-nee.

That the defendant, at the time he paid the money as aforesaid, knew or believed that the belt thirdly hereinafter described was made to commemorate or represent "the first approach

to the Indians of the people with white faces," and that it had once been the property of the Ho-de-no-sau-nee. It was that fact, so believed by him, which gave to it an historical interest which made it of value in his eyes. 37

And that the said wampum belt thirdly hereinafter described was made to commemorate or represent "the first approach to the Indians of the people with white faces," and had once been the property of the Ho-de-no-sau-nee.

That the defendant, at the time he paid the money as aforesaid, knew or believed that the belt fourthly hereinafter described was made to commemorate or represent "the unity of the" Ho-de-no-sau-nee, or "Five Nations," and that it had once been the property of the Ho-de-no-sau-nee. It was that fact, so believed by him, which gave to it an historical interest which made it of value in his eyes. 38

And that the said wampum belt fourthly hereinafter described was made to commemorate or represent "the unity of the" Ho-de-no-sau-nee, or "Five Nations," and that it had once been the property of the Ho-de-no-sau-nee. 39

That the defendant, at the time he paid the money as aforesaid, knew or believed that all of the wampum belts hereinafter described were the property of the Ho-de-no-sau-nee, and it was that fact, so believed by him, which gave to them the historical interest which made them of value in his eyes. That he had not then, and has not since, been informed that the council, or senate, or any governing body, or any royaner of the Ho-de-no-sau-nee, or Six Nations, had given any authority or permission to the

said Webster to sell or part with any of the said wampum, and he did not then believe and does not now believe that any such authority had ever been given.

That the plaintiff Te-hes-ha is an Onondaga, and one of the chiefs of the Onondaga Nation, and that at and by a governing council of that Nation regularly convened, being the body which has supreme authority in that Nation, Harriet Maxwell Converse, of New York City, was, prior to the bringing of this action, regularly appointed the agent and attorney in fact of the said Nation to recover the said wampum.

The said wampum is described as follows:

One belt of dark wampum beads, representing the confederation organization of the Five Nations under Hiawatha, being the "big piece" spoken of in the first above letter, and which was exhibited at Chicago as above stated.

One belt representing the First Treaty stipulation between the Six Nations and General George Washington, picturing in wampum bead work the Council House, General Washington, the To-do-da-ho, or president of the Nations, and thirteen representatives of the States, being the belt spoken of in the above letters as "The Washington Belt," and which was exhibited at Chicago as above stated.

A fragment of a wampum belt representing the first approach to the Indians of the "people with white faces."

A fragment of a belt, or a narrow belt, representing the unity of the Five Nations.

These last two being the "two other pieces

of historical interest" mentioned in the second above letter. 43

And that at the date aforesaid, the said Ho-de-no-sau-nee were the owner, and through the wampum-keeper of the Onondaga Nation, being the said Webster, were in the possession of the said wampum, and being so in possession, the said Carrington, on or about the date aforesaid, without the consent of either of the plaintiffs, or any of the Ho-de-no-sau-nee, except the said Webster, and without the consent of its council or senate or governing body, and without the consent of any one of the aforesaid Six Nations, or any council or governing body of any one of them, or any officer in authority of any one of them, wrongfully took said wampum from the possession of the said Onondaga Nation, and the same came wrongfully, as aforesaid, into the possession of the defendant, and that the defendant wrongfully detains the same. 44

That before the beginning of this action the Onondaga Nation and the plaintiff Te-hes-ha, on behalf of all of the Ho-de-no-sau-nee as well as himself, each separately demanded of the defendant the delivery of each of the aforesaid belts of wampum, and defendant refused to deliver any of the same; that is to say, the defendant made no answer and has not delivered any of the same. 45

That the individuals of the Ho-de-no-sau-nee, or Six Nations, are more than five thousand in number.

WHEREFORE, the plaintiffs demand that the defendant be adjudged to deliver to the plaintiffs the said belts of wampum, and to pay the

46 plaintiffs damages for the detention thereof to the sum of five hundred dollars, besides costs, and that a receiver may be appointed by the Court to take the custody and immediate possession of the said belts of wampum during the pendency of this action; and that in the meantime the defendant be enjoined from disposing of, destroying, cutting, mutilating, injuring, concealing or removing out of the jurisdiction of this Court, the said belts of wampum, or any of them.

47 EDWARD WINSLOW PAIGE,
Plaintiffs' Attorney,
44 Cedar Street,
New York.

48

New York County, ss. : 49

HARRIET MAXWELL CONVERSE, being duly sworn, says that she is the agent and attorney in fact of the plaintiff, the Onondaga Nation, for the recovery of the wampum mentioned in the foregoing complaint.

That she has read the foregoing complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters she believes it to be true. 50

That the reason why this affidavit is made by her and not by one of the plaintiffs is that neither of the plaintiffs is in the County of New York or the County of Schenectady. That she resides in the County of New York and the plaintiffs' attorney resides in the County of Schenectady.

That the grounds of her belief as to the matters stated in the complaint are :

1. The originals of the letters, report and paper above quoted. 51

2. The general history of the Ho-de-no-sau-nee.

3. The report of the last United States Census as to Indians, supposed as to New York to have been made by the said Carrington.

4. As to the allegations that no consent had been given, information given by the plaintiff Te-hes-ha and the other chiefs of the Onondaga present at the Council alluded to in the com-

52 plaint, and by chiefs of all the others of the Six Nations, except the Mohawks; and the fact that no Six Nation council was held near that time.

5. Letters of the said Carrington and the said Sanborn.

HARRIET MAXWELL CONVERSE.

Sworn to before me this 28th day of September, 1897.

A. ACKERMAN,
[L. S.] *Notary Public*,
N. Y. County.

53

54

SUPREME COURT. 55

ONONDAGA COUNTY.

THE ONONDAGA NATION and TE-HES-HA, an Onondaga Indian, on his own behalf and also on that of all of the HO-DE-NO-SAU-NEE,
Plaintiffs,

against

JOHN BOYD THACHER,
Defendant. 56

Upon the complaint, duly verified, and the affidavit of Harriet Maxwell Converse, annexed, it is

Ordered, that the defendant be, and he hereby is, until the further order of the Court, enjoined and restrained from disposing of, destroying, mutilating, injuring, concealing or removing out of the jurisdiction of the Court the belts of wampum described in the complaint or any of them. 57

The grounds of this injunction are that the Ho-de-no-sau-nee are the owners of the wampum and the Onondaga Nation is its official custodian, and that it appears that the plaintiffs are entitled to a judgment, as prayed in the complaint.

Dated October 1st, 1897.

ALONZO P. STRONG,
County Judge,
Schenectady County.

58 SUPREME COURT,

ONONDAGA COUNTY.

THE ONONDAGA NATION and TEHES-HA, an Onondaga Indian, on his own behalf, and also on behalf of all of the HO-DE-NO-SAU-NEE,

vs.

59 JOHN BOYD THACHER.

For answer to the complaint herein,

I.—The defendant alleges that on or about the first day of March, 1893, the Rev. Dr. Oliver Crane, mentioned and referred to in the complaint, sold and delivered to the defendant the several belts of wampums, so called, which the person who drafted the complaint herein has attempted to describe. That in consideration of such sale and delivery of said belts of wampum the defendant agreed to pay and did pay to the said Rev. Dr. Oliver Crane the sum
60 of $500 in lawful money, and thereupon became, ever since has been and is now the true and lawful owner of each and every of said belts of wampum. That the foregoing is the transaction attempted to be described in the complaint in this action and none other.

II.—The defendant admits that during the year 1895 and prior to the sale and delivery of said belts of wampum hereinbefore described, the Rev. John Wentworth Sanborn, mentioned and referred to in the complaint, applied to one Donald MacNaughton and the defendant, who were then and there

two of the managers for the State of New York of 61
the World's Fair or Columbian Exhibition, and
offered in behalf of the said Rev. Dr. Oliver Crane
to sell said belts of wampum to said MacNaughton
and defendant as such Managers with the object in
view of having the same constitute a portion of the
the exhibit of the State of New York at said
Columbian Exhibition. That the defendant, be-
lieving that such proposed purchase on behalf of
the State of New York would be unlawful for the
reason that the moneys appropriated by said State
for the use of said Managers in connection
with said Exhibit were not applicable to and 62
could not be devoted to any such purpose, there-
after upon the solicitation of said Rev. John
Wentworth Sanborn, so acting in behalf of said
Rev. Dr. Oliver Crane, became the purchaser of
said belts of wampum in manner and form afore-
said and paid out of his own personal moneys to the
said Rev. Dr. Oliver Crane, who, as defendant is
informed and verily believes, was at that time the
true and lawful owner thereof, the sum of $500,
and also admits that defendant has not since such
purchase and sale delivered any of said belts of
wampum to the parties named as plaintiff in this
action or to any other person or persons who claim 63
to have made any demand for the possession of the
same.

III.—The defendant admits that on or about the
21st day of December, 1896, the defendant wrote
to the Secretary of the Board of Regents of the
State of New York a certain letter, a copy of which
is set forth in the complaint, dated on that date,
and alleges that said letter was written in reply to
a letter theretofore received from said Secretary of
the Board of Regents, of which the following is a
copy:

64 "REGENTS OFFICE, ALBANY, N.Y.,
19 d '96.

Hon. JOHN BOYD THACHER,
Albany, N. Y.

DEAR MR. THACHER: We are just ordering some handsome cases to display a selection of our Indian relics in the new Indian museum. The most valuable thing, of course, will be the wampum collection. As I understand it, the wampum exhibited at Chicago was left in your custody till there was place for it in a fireproof building. I told Mr. Richmond that as soon as he was ready
65 for it I would find out from you just how much you had belonging to the state. Will you kindly let me know, as he is making up his collection to exhibit early in the legislative session?

Yours very truly,
(sd) MELVIL DEWEY."

IV.—The defendant admits that on or about the 26th day of December, 1896, the defendant sent to Mr. Dewey a letter, a copy of which, dated December 26th, 1896, is set forth in the complaint, and alleges that said letter last mentioned was written by defendant in reply to a letter received
66 from said Dewey, of which the following is a copy:

"UNIVERSITY OF THE STATE OF NEW YORK,
ALBANY, 23 December, 1896.

Hon. JOHN BOYD THACHER,
Albany, N. Y.

DEAR MR. THACHER: We have Mrs. Converse's wampum in the safe all right, but what we are looking for is the Washington wampum, the treaty with the Five Nations. There may be some blunder in my information that this was sold to the state of New York and exhibited at Chicago.

Possibly you bought this personally, and it has been confused. If so, it would help me to straighten out these people if you would kindly let me know if you have this particular piece, and that it was an error in reporting it to me as having been bought out of the appropriation for the Chicago exhibit. I must make some explanation, of course, to these people who have called upon me to produce the wampum, of which they seem to have the full history up to its sale, as they supposed, to the state. I was much pleased with the interest you manifested in the national library matter, and with your suggestion of a little farther talk about it some day. I should be delighted to compare notes with you, for you are one of the few men that can grasp a great movement, and that cannot be and are not frightened to death because your grandmother did not do it exactly the same way that is now proposed. It was no disappointment to me that the very day we were talking Congress had failed to appreciate the situation, and on the first test vote defeated a part of the initial plan. 67 68

Yours very truly,

(sd) MELVIL DEWEY."

And the defendant alleges that subsequently and on or about the 19th day of January, 1897, the defendant received from the said Melvil Dewey a letter upon the same subject, of which the following is a copy: 69

"UNIVERSITY OF THE STATE OF NEW YORK,

ALBANY, 18 January, 1897.

Hon. JOHN BOYD THACHER,

Albany, N. Y.

DEAR MR. THACHER: I find your note of January 13 on my return from a trip. I did not understand at all that you were the agent of the state, but

70 that it was purely a personal matter. My suggestion was simply that as a matter of public spirit you might be glad either to give the state the belts which it ought to have secured, or to allow us to have them by refunding what you paid for them. Would you be willing to do this?

Yours very truly,
(sd) MELVIL DEWEY,
Secretary."

V.—The defendant denies that he has any knowledge or information sufficient to form a belief as to the accuracy of the several alleged extracts from
71 the so-called report entitled "New York at the World's Columbian Exhibition, 1893," Senate Document, No. 86 of 1894, contained in the complaint.

Denies, upon information and belief, that no consent or authority was given to Thomas Webster, the keeper of the wampum, to sell or part with any of the wampum by the aforesaid Ho-de-no-sau-nee or Six Nations or by its senate or council or by any one of the said Six Nations or councils or any of them or any one in authority among them; and affirmatively alleges that it was so sold with the
72 full knowledge and consent of the plaintiffs so called and particularly with the knowledge and consent of the so-called Te-hes-ha.

VI.—The defendant specifically denies that the wampum described in the complaint still is the property of the said Ho-de-no-sau-nee or Six Nations or of any other person than the defendant, and specifically denies that the defendant at the time he paid the money aforesaid knew or believed that any or either of said wampum belts were the property of the Ho-de-no-sau-nee at the time of such purchase.

VII.—The defendant specifically denies that he was not informed that the council or senate or any governing body of the Ho-de-no-sau-nee or Six Nations had given any authority or permission to the said Webster to sell or part with said wampum and denies that he did not then believe and does not now believe that any such authority was ever given. 73

VIII.—The defendant specifically denies that any or either of said wampums were ever wrongfully taken from the possession of the said Onondaga Nation, denies that the same came wrongfully into the possession of the defendant, denies that the defendant wrongfully detains the same, and further specifically denies that before the beginning of this action the Onondaga Nation and the plaintiff Te-hes-ha on behalf all the Ho-de-no-sau-nee as well as himself or either of said parties demanded of the defendant the delivery of said belts of wampum. 74

IX.—The defendant denies, on information and belief, that at and by a governing council of the Onondaga Nation, regularly convened, Harriet Maxwell Converse, of New York City, was, prior to the beginning of this action, regularly appointed the agent and attorney in fact of the said Nation to recover said wampum. 75

X.—The defendant denies that he has any knowledge or information sufficient to form a belief as to any or either of the other allegations of the complaint.

XI.—And for a further and separate answer and defense to the complaint herein, the defendant alleges upon information and belief that neither the Onondaga Nation, so called, nor Te-hes-ha, so called, whose names are inserted as plaintiffs in the complaint in this action, have any real

76 interest in this action or the subject-matter thereof, and that no authority was ever given by either of said alleged plaintiffs to any person to commence the action.

XII.—And for a further and separate answer and defense to the allegations of the complaint herein, the defendant alleges that neither the Onondaga Nation, so called, nor Te-hes-ha, an Onondaga Indian, on his own behalf and also on behalf of the Ho-de-no-sau-nee, the alleged parties plaintiff in this action, had or has the legal capacity to sue, or the legal capacity to bring and maintain
77 this action.

Wherefore, the defendant demands judgment that the complaint herein be dismissed, together with the costs of the action.

JOHN A. DELEHANTY,
Attorney for Defendant,
Office and Post-office Address,
Commercial Bank Building,
Albany, N. Y.

STATE OF NEW YORK,
City and County of Albany, } ss.:

JOHN BOYD THACHER, being duly sworn, de-
78 poses and says that he is the defendant in this action, that he has read the forogoing answer and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JOHN BOYD THACHER.

Sworn to before me this 15th day of November, 1897.

JAMES J. FAMEN,
Com. of Deeds,
Albany, N. Y.

At a Special Term of the Supreme Court, held at the Court House in the City of Syracuse on the twentieth day of December, one thousand eight hundred and ninety-eight. 79

Present—Honorable FRANK H. HISCOCK, Justice.

THE ONONDAGA NATION and TE-HES-HA

against

JOHN BOYD THACHER. 80

A motion having been made by the persons hereinafter named and by the plaintiffs to make such persons additional plaintiffs in this action, after reading and filing the pleadings; the record of the action of the Onondaga Nation on the twenty-sixth of February, 1898, and the bill of sale of the Onondaga Nation to the University of the State of New York, and after hearing Edward Winslow Paige for the motion and the Honorable John A. Delehanty, opposed, it is 81

Ordered, that Sho-heh-do-nah, an Onondaga Indian; Ha-on-wengo-wenle, an Onondaga Indian; Jarvis Farmer, an Onondaga Indian; Ho-do-eh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian; and the University of the State of New York be and they hereby are brought into and made parties plaintiff to this action, and that the summons and complaint be and are amended accordingly without further service of the same; that the complaint be further amended without further service of the

82 same by inserting at the beginning this allegation: "The plaintiffs, bringing this action on behalf of "all of the Ho-de-no-sau-nee as well as themselves, "show to the Court," and by adding the following other allegations: "That on the twenty-sixth "day of February, 1898, the Onondaga Nation "elected the University of the State of New York "to the office of wampum-keeper, and, by bill of "sale, sold and transferred to the University of "the State of New York all its interest in the "said wampums."

That the answer be deemed to deny the said alle-
83 gations without further service, if so desired by defendant, and that the defendant may plead the statute of limitations.

Enter.

F. H. H.,
J. S. C.

84

SUPREME COURT, 85

ONONDAGA COUNTY.

THE ONONDAGA NATION and TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all of the HO-DE-NO-SAU-NEE, and others,
Plaintiffs,

against 86

JOHN BOYD THACHER,
Defendant.

The issues in the above-entitled action having been brought on for trial at a Trial Term of the Supreme Court, held in and for the County of Onondaga, at the Court House in the City of Syracuse, on the 22d day of December, 1898, before Hon. Frank H. Hiscock, Justice of the said Court, and the issues having been duly tried by said Justice and the said case having been thereafter 87
submitted to the said Justice for determination as to both the law and the facts upon argument, both oral and written, by the attorneys for the respective parties.

Now, upon the issues of fact joined to said action and upon all the allegations and proofs of the respective parties and the argument of counsel, and due deliberation having been had thereon,

I do hereby find and decide the following conclusions as matters of fact and of law, viz.:

88 **Facts.**

I.—That during a period of many years prior to the year 1713, there existed a Confederacy of Iroquois Indians composed of the Onondaga, Oneida, Mohawk, Seneca and Cayuga tribes, designated in their own language as the Ho-de-no-sau-nee, but known and referred to in history as the League of the Five Nations.

II.—That thereafter and in or about the year 1713, another tribe known as the Tuscaroras was received into said Confederacy and thereafter the
89 League was known and referred to as the League of the Six Nations.

III.—That during the earliest period of the existence of said Confederacy, the Indians of which said League was composed made use of strings of wampum beads or shells braided or pleated together in broad bands and commonly known as wampum belts, as a means of commemorating and preserving the memory of important events such as the making of treaties, the coming of the white man, &c., and that while the League of the Iroquois was in active existence the tribes or members
90 thereof composing it employed this method of preserving the history of the events which they conceived to be of importance.

IV.—That while such custom was in vogue the care and custody of such wampum belts as were so used was entrusted to the Onondaga Nation, which appointed one of its members as an official sometimes designated as the "wampum-keeper" whose duty it was to preserve the same and upon ceremonial occasions expound them and emphasize their meanings and significance.

V.—That the wampum belts mentioned and de-

scribed in the complaint in this action constituted 91
a portion of the wampum belts at one time made
and possessed by the League and used for the
foregoing purposes.

VI.—That at a time many years prior to the
10th day of February, 1891, the ancient Confeder-
acy above referred to, composed first of the five
and then of the six tribes or nations of Indians
above mentioned, was dissolved and thereafter had
no active or actual existence. That its respective
names had become associated with a period long
gone by; that the tribes of which it consisted had
become separated, and to a large extent scattered 92
and dispersed throughout the United States of
America and the Dominion of Canada, and those
who had remained in this country had become
wards of the Government.

VII.—That on and after the happening of the
foregoing events, viz.: the dissolution and disrup-
tion of the said Iroquois Confederacy, the use of
the wampum belts for any of the foregoing pur-
poses for which they were originally prepared be-
came obsolete. The wampum thereupon became
nothing more than curiosities and relics of a time,
condition, and confederation which had ceased to 93
exist, and the office or position of wampum-keeper,
so far as its original significance is concerned, be-
came useless and was abrogated.

VIII.—That on the 10th day of February, 1891,
and for many years prior thereto, one Thomas
Webster, an Onondaga Indian, had become the
owner and was in possession of several of the
wampum belts above referred to, including those
enumerated in the complaint herein. That said
Webster was not then, and never was, an incum-
bent of the office or position of wampum-keeper of

94 the Onondaga Nation or of any of the individual tribes composing the Iroquois Confederacy, and that there was at that time no such official position known or recognized among the Indians composing any or either of said tribes or confederacy. That the individual and personal ownership of said Thomas Webster in said wampum belts was recognized by the said several tribes which formerly constituted said League and by the individual members thereof, and that said tribes and Indians had long prior to that time ceased to treat or regard said wampum belts as the property of either the Onondaga Nation or the Iroquois League.

95

IX.—That on or about the 10th day of February, 1891, the said Thomas Webster then being the individual owner and in possession of said several belts of wampum, in consideration of the payment to him of the sum of seventy-five dollars ($75), bargained, sold and delivered said wampum belts to one Henry B. Carrington.

X.—That thereafter, and in or about July, 1892, the said Henry B. Carrington in consideration of the payment to him of the sum of three hundred and fifty dollars ($350), bargained, sold and de-
96 livered said wampum belts to one Oliver Crane.

XI.—That thereafter, and on or about the 24th day of March, 1893, the said Oliver Crane, in consideration of the payment to him of the sum of five hundred dollars ($500), bargained, sold and delivered to said defendant, John Boyd Thacher, the said several belts of wampum described in the complaint, and the same have ever since remained in the possession of said defendant.

XII. That said purchase on the part of the defendant was made in good faith and as a matter of public spirit.

XIII. That prior to the commencement of this 97
action, neither the Onondaga Nation, the plaintiff (Te-hes-ha), the University of the State of New York, nor any of the other plaintiffs demanded of the defendant the delivery of either of the aforesaid wampum belts.

XIV. That the plaintiff Te-hes-ha has died since the commencement of this action and no personal representative or other person has been substituted in his place.

XV. That the University of the State of New York never purchased any or either of the wampum belts mentioned and described in the complaint, 98
and that said University of the State of New York never was selected or "raised up" to the position or office of "wampum-keeper," and no official proceedings were ever begun on the part of any of the tribes of Indians which formerly composed said Iroquois Confederacy for the purpose of conferring any such position or office upon said University of the State of New York, assuming that there is or was at the time of said alleged proceedings any such official position.

Law. 99

1. That on or about the 24th day of March, 1893, the defendant, for a valuable consideration, became the absolute owner of each and every of the wampum belts described in the complaint herein, and continued as such owner up to the time of the commencement of this action.

2. That a demand upon the defendant for the delivery of said belts was a necessary prerequisite to the commencement of the action. That no demand therefor was ever made upon the defendant by or in behalf of any or either of the plaintiffs herein.

100 3. That the plaintiff herein referred to as the Onondaga Nation has not the legal capacity to sue in the Courts of this State.

4. That the plaintiff herein referred to as the University of the State of New York, has no property right or other interest in the subject matter of this action sufficient to entitle it to bring an action for the recovery of any or either of wampum belts.

5. That there is no such identity and community of interest between the plaintiff Te-hes-ha, the other individual plaintiffs made parties to this action since the commencement thereof, and the
101 members of the several Indian tribes whose ancestors constituted a part of the League of the Five Nations and the League of the Six Nations, in having such wampum belts preserved and restored to some custodian as permits the maintenance of this action.

6. That the defendant, John Boyd Thacher, is entitled to a judgment dismissing the complaint herein together with the costs of this action.

7. That the injunction heretofore, and on the the first day of October, 1897, granted by the
102 Hon. Alonzo P. Strong, County Judge of Schenectady County, enjoining and restraining the defendant from disposing of, destroying, mutilating, injuring, concealing or removing out of the jurisdiction of this Court the belts of wampum described in the complaint, or any of them, should be and hereby is dissolved.

FRANK H. HISCOCK,
J. S. C.

SUPREME COURT. 103

THE ONONDAGA NATION OF INDIANS and others,
Plaintiffs,

against

JOHN BOYD THATCHER,
Defendant.

Plaintiffs' Exceptions. 104

The plaintiffs each separately except to the findings of the court as follows:—The court, in its decision made the following findings and each of the plaintiffs separately excepted as hereinafter stated:—

"VI. That at a time many years prior to the 10th day of February, 1891, the ancient confederacy above referred to, composed first of the five and then of the six tribes or nations of Indians above mentioned, was dissolved (to which each plaintiff separately excepted), and thereafter had no active (to which each plaintiff separately excepted) or actual existence (to which each plaintiff separately excepted. That its respective names had become associated with a period long gone by (to which each plaintiff separately excepted); that the tribes of which it consisted had become separated (to which each plaintiff separately excepted) and to a large extent scattered and dispersed throughout the United States of America and the Dominion of Canada (to which each plaintiff separately excepted) and those who had remained in this country had become wards of the Government (to which each plaintiff separately excepted). 105

106 VII. That on and after the happening of the foregoing events, viz.: the dissolution and disruption of the said Iroquois Confederacy (to which each plaintiff separately excepted), the use of the wampum belts for any of the foregoing purposes for which they were originally prepared became obsolete (to which each plaintiff separately excepted). The wampums thereupon became nothing more than curiosities (to which each plaintiff separately excepted) and relics (to which each plaintiff separately excepted) of a time, condition and confederation which had ceased to exist (to which each plaintiff separately excepted), and the office
107 or position of wampum-keeper so far as its original significance is concerned became useless (to which each plaintiff separately excepted) and was abrogated (to which each plaintiff separately excepted).

VIII. That on the 10th day of February, 1891 (to which each plaintiff separately excepted), and for many years prior thereto (to which each plaintiff separately excepted), one Thomas Webster, an Onondaga Indian, had become the owner (to which each plaintiff separately excepted) and was in pos-
108 session of several of the wampum belts above referred to, including those enumerated in the complaint herein (to which each plaintiff separately excepted). That said Webster was not then (to which each plaintiff separately excepted) and never was (to which each plaintiff separately excepted) an incumbent of the office or position of wampum-keeper of the Onondaga Nation (to which each plaintiff separately excepted) or of any of the individual tribes composing the Iroquois Confederacy (to which each plaintiff separately excepted), and that there was at that time no such official position known or recognized among the Indians composing

any or either of said tribes or confederacy (to which each plaintiff separately excepted). That the individual and personal ownership of said Thomas Webster in said wampum belts was recognized by the said several tribes which formerly constituted said league (to which each plaintiff separately excepted) and by the individual members thereof (to which each plaintiff separately excepted), and that said tribes and Indians had long prior to that time ceased to treat or regard said wampum belts as the property of either the Onondaga Nation or the Iroquois League (to which each plaintiff separately excepted). 109 110

IX. That on or about the 10th day of February, 1891, the said Thomas Webster then being the individual owner (to which each plaintiff separately excepted) and in possession of said several belts of wampum (to which each plaintiff separately excepted), in consideration of the payment to him of the sum of seventy-five dollars ($75) bargained, sold and delivered said wampum belts to one Henry B. Carrington (to which each plaintiff separately excepted).

X. That thereafter and in or about July, 1892, the said Henry B. Carrington, in consideration of the payment to him of the sum of three hundred and fifty dollars ($350), bargained, sold and delivered said wampum belts to one Oliver Crane (to which each plaintiff separately excepted). 111

XI. That thereafter and on or about the 24th day of March, 1893, the said Oliver Crane, in consideration of the payment to him of the sum of five hundred dollars ($500), bargained, sold and delivered to said defendant, John Boyd Thacher, the said several belts of wampum described in the complaint (to which each plaintiff separately excepted)

112 and the same have ever since remained in the possession of said defendant.

XII. That said purchase on the part of the defendant was made in good faith (to which each plaintiff separately excepted) and as a matter of public spirit (to which each plaintiff separately excepted).

XIII. That prior to the commencement of this action neither the Onondaga Nation (to which each plaintiff, separately excepted) the plaintiff Te-hes-ha (to which each plaintiff separately excepted) nor
113 any of the other plaintiffs demanded of the defendant the delivery of either of the aforesaid wampum belts (to which each plaintiff separately excepted).

XIV. That the plaintiff Te-hes-ha has died since the commencement of this action (to which each plaintiff separately excepted) and no personal representative or other person has been substituted in his place (to which each plaintiff separately excepted).

XV. That the University of the State of New
114 York never purchased any or either of the wampum belts mentioned and described in the complaint (to which each plaintiff separately excepted), and that said University of the State of New York never was selected or raised up to the position or office of wampum keeper (to which each plaintiff separately excepted), and no official proceedings were ever begun on the part of any of the tribes of Indians which formerly composed said Iroquois confederacy for the purpose of conferring any such position or office upon said University of the State of New York (to which each plaintiff separately excepted), assuming that there is or was at the

time of said alleged proceedings any such official position (to which each plaintiff separately excepted). 115

Law.

1. That on or about the 24th day of March, 1893, the defendant for a valuable consideration became the absolute owner of each and every of the wampum belts described in the complaint herein (to which each plaintiff separately excepted) and continued as such owner up to the time of the commencement of this action (to which each plaintiff separately excepted). 116

2. That a demand upon the defendant was a necessary prerequisite to the commencement of this action (to which each plaintiff separately excepted). That no demand therefor was ever made upon the defendant (to which each plaintiff separately excepted) by or in behalf of any or either of the plaintiffs herein (to which each plaintiff separately excepted).

3. That the plaintiff herein referred to as the Onondaga Nation has not the legal capacity to sue in the courts of this State (to which each plaintiff separately excepted). 117

4. That the plaintiff herein referred to as the University of the State of New York has no property right or other interest in the subject matter of this action (to which each plaintiff separately excepted) sufficient to entitle it to bring an action for the recovery of any or either of said wampum belts (to which each plaintiff separately excepted).

6. That there is no such identity and community of interest between the plaintiff Te-hes-ha, the other individual plaintiffs made parties to this action since the commencement thereof and the members

118 of the several Indian tribes whose ancestors constituted a part of the League of the Five Nations and the League of the Six Nations in having such wampum belts preserved and restored to some custodian as permits the maintenance of this action (to which each plaintiff separately excepted).

6. That the defendant John Boyd Thacher is entitled to a judgment dismissing the complaint herein (to which each plaintiff separately excepted) together with the costs of this action (to which each plaintiff separately excepted).

119 7. That the injunction heretofore, and on the first day of October, 1897, granted by the Hon. Alonzo P. Strong, County Judge of Schenectady County, enjoining and restraining the defendant from disposing of, destroying, mutilating, injuring, concealing or removing out of the jurisdiction of this Court the belts of wampum described in the complaint, or any of them, should be (to which each plaintiff separately excepted) and hereby is dissolved (to which each plaintiff separately excepted). And each plaintiff excepted separately to the refusal of the court to find the following fact: "One of these wampums was used as the
120 "means of commemorating and preserving the "terms of the first treaty made between the "Ho-de-no-sau-nee and the United States of "America."

And to find this, "It was made in 1784."

EDWARD WINSLOW PAIGE,
Attorney for the Plaintiffs.

To the honorable JOHN A. DELEHANTY,
Attorney for the Defendant.

SUPREME COURT, 121

ONONDAGA COUNTY.

THE ONONDAGA NATION, TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all the Ho-do no-sau-nee; UNIVERSITY OF THE STATE OF NEW YORK; SAY-HA-QUE, an Onondaga Indian; HOS-HAY-QUA, an Onondaga Indian; SHO-HEH-DO-NAH, an Onondaga Indian; HA-ON-WENGO-WENLE, an Onondaga Indian; JARVIS FARMER, an Onondaga Indian; HO-DO-OH-GO-AH, a Seneca Indian; and HA-JA-AH-GWYSH, a Cayuga Indian,

Plaintiffs,

against

JOHN BOYD THACHER,

Defendant.

122

Judgment 26th December, 1899.

123

This cause having been duly reached on the calendar in its regular order at a Trial Term of the Supreme Court, held in and for the County of Onondaga, at the Court House in the City of Syracuse, on the 22d day of December, 1898, before Hon. Frank H. Hiscock, Justice, and the allegations and proofs on the part of the plaintiffs and defendant having been duly heard and considered, both upon the law and the facts, and said Justice having after due deliberation determined that the defendant, John Boyd Thacher, is entitled to a judgment dis-

missing the complaint herein, together with the costs of this action, and having duly directed that said complaint be dismissed and judgment rendered for defendant accordingly,

Now, on motion of John A. Delehanty, attorney for said defendant, it is

Adjudged, that the plaintiffs' complaint be and the same is hereby dismissed upon the merits, and that the defendant, John Boyd Thacher, do recover of the above-named plaintiffs the sum of one hundred and sixty-nine dollars and twenty-eight cents ($169.28) costs and disbursements as adjusted by the Clerk of Onondaga County and that he have execution therefor. And it is hereby further

Adjudged, that the plaintiffs were not entitled to the injunction granted herein on the first day of October, 1897, by the Hon. Alonzo P. Strong, County Judge of Schenectady County, enjoining and restraining the defendant from disposing of, destroying, mutilating, injuring, concealing or removing out of the jurisdiction of this Court, the belts of wampum described in the complaint, or any of them, and that said injunction is hereby vacated and dissolved.

GEORGE J. YAECKEL,
Clerk.

SUPREME COURT, 127

ONONDAGA COUNTY.

THE ONONDAGA NATION and TEHES-HA, an Onondaga Indian, on his own behalf and also on behalf of all of the HO-DE-NO-SAU-NEE,

vs.

JOHN BOYD THACHER. 128

APPEARANCES:

For Plaintiff, EDWARD WINSLOW PAIGE.
For defendant, JOHN A. DELEHANTY.

Tried at a regular trial Term of the above Court, at the Court House in the City of Syracuse, Thursday, December 22d, 1899, before Hon. Frank H. Hiscock, Justice, presiding.

Mr. Paige: I will read in evidence from 129
Senate document No. 86 of 1894, being a report of the Board of General Managers of the World's Fair Columbian Exposition at Chicago, and signed by the defendant, as follows:

"When the Dutch settled New Amsterdam in "1614, they found a Republic in the wilderness "whose constitution and laws were free from com- "plications, which have so often led, among other "races, to conflict—a Constitution framed to pre- "vent political corruption, and which achieved, in "the hands of its founders, eminent success in "that important particular. The confederacy was

130 "in so complete a state when New York was
"founded that historians are justified in their con-
"clusions that it had been previously in success-
"ful operation for many years. The Iroquois
"were called the Five Nations, and included the
"following tribes: Mohawks, Onondagas, Sene-
"cas, Onedias and Cayugas. Their federal arms
"consisted of a bear, a deer, a wolf, a turtle, and
"a beaver.

"The original piece of wampum made to com-
"memorate the confederation of the five tribes,
"and which, therefore, antedates the Columbian
131 "discovery, is owned by Hon. John Boyd Thacher,
"of Albany, N. Y., and during the exposition was
"exhibited in the Government Building."

"The league (the above-named 'republic' and
"'confederacy' meaning) was a union of five
"tribes made up of clans, all forming one govern-
"ment, each tribe having local authority like our
"individual states. There was a general council
"of Sachems, fifty in number, of equal rank and
"authority. This council had supreme power in
"matters pertaining to the league. The fifty
"Sachems held office perpetually. They had
"power to fill vacancies in the clans by elections
132 "but only on the nomination of the eldest women
"of the clan. These Sachems could depose a
"chief for cause, but they could not invest a
"Sachem with office; the general council did that.
"The Sachems of any tribe, with the war chiefs of
"that tribe, formed the council of the tribe and had
"authority similar to that of a State Legislature."

"All public acts became so only by the unani-
"mous decision of the league. The Sachems voted
"by tribes in the general council; thus, a small
"tribe had as much power as a large one. The
"council of each tribe had power to convene itself.
"The orators of the people had perfect liberty to

"discuss public questions before the general coun- 133
"cil, but only the general council could render a
"decision. Such, in brief, are the characteris-
"tics of the famous league of the Iroquois."

"In the rotunda of the Government building
"were thirteen large panels which were at the dis-
"posal of the thirteen original States for a display
"of Colonial and historical relics and curios. New
"York's was especially attractive in interesting
"relics, owing to the broad and rich domain of
"early New York history and to the exertions and
"influence of Mrs. Jones, of the Board of Women
"Managers, and Mr. Thacher, of the Board of 134
"General Managers, in securing the loan of ar-
"ticles for the exhibition, and in bringing many
"famous mementoes from their hiding places."

"Prominent among the articles exhibited were the
"Washington relics from the State Library, auto-
"graphs of the Presidents and the Signers of the
"Declaration of Independence, original model of
"Fulton's 'Clermont,' and the wampum belt com-
"memorative of the first treaty and alliance of the
"Six Nations of New York, and now in the pos-
"session of Hon. John Boyd Thacher of Albany."

The Court: That is a report signed by the
defendant? 135

Mr. Paige: Yes, sir.

Mr. Paige: I now offer from Morgan's "The League of the Iroquois," published in Rochester in 1851, the following:

You will admit Mr. Morgan is dead?

Mr. Delehanty: I will, if you say so.

Mr. Paige: Yes.

"At the institution of the league fifty permanent sachemships were created, with appropriate
"names; and in the sachems who held these titles
"were vested the supreme powers of the confeder-
"acy. To secure order in the succession, and to

136 "determine the individuals entitled, the sachem-
"ships were made hereditary, under limited and
"peculiar laws of descent. The sachems them-
"selves were equal in rank and authority, and in-
"stead of holding separate territorial jurisdic-
"tions, their powers were joint, and co-extensive
"with the league. As a safeguard against con-
"tention and fraud, each sachem was 'raised up'
"and invested with his title by a council of all the
"sachems, with suitable forms and ceremonies.
"Until this ceremony of confirmation or investi-
"ture, no one could become a ruler. He received,
"when raised up, the name of the sachemship it-
137 "self, as in the case of titles of nobility, and so
"also did his successors, from generation to gen-
"eration. The sachemships were distributed un-
"equally between the five nations, but without
"thereby giving to either a preponderance of
"political power. Nine of them were assigned to
"the Mohawk nation, nine to the Oneida, fourteen
"to the Onondaga, ten to the Cayuga and eight to
"the Seneca. The sachems, united, formed the
"Council of the League, the ruling body, in which
"resided the executive, legislative and judicial
"authority. It thus appears that the government
"of the Iroquois was an oligarchy, taking the
"term, at least, in the literal sense, 'the rule of
138 "the few;' and, while more system is observable
"in this than in the oligarchies of antiquity, it
"seems also better calculated, in its framework, to
"resist political changes.

"This specimen of Indian legislation is so remark-
"able that a table of these sachemships, with their
"division into classes, indicating certain inter-
"relations, hereafter to be explained, is inserted
"in the Seneca dialect."

Then follows a list of fifty-one sachems. Second

on the list is Hiawat-ha of the Turtles of the Mo- 139
hawks.

"These titles or names were hereditary in the sev-
"eral tribes of which each nation was composed.
"When an individual was made a sachem, upon
"the death or deposition of one of the fifty, his
"name was 'taken away' and the name of the
"sachemship held by his predecessors was con-
"ferred upon him. Thus, upon the demise of the
"Seneca sachem, who held the title Ga-ne-o-di-yo,
"a successor would be raised up from the Turtle
"tribe, in which the sachemship was hered-
"itary, and after the ceremony of investiture, the 140
"person would be known among the Iroquois only
"under the name of Ga-ne-o-di-yo. These fifty
"titles, excepting two, have been held by as many
"sachems, in succession, as generations have passed
"away since the formation of the League.

"The Onondaga nation, being situated in a cen-
"tral position, were made the keepers both of the
"Council Brand and of the Wampum, in which
"the structure and principles of their government,
"and their laws and treaties, were recorded. At
"stated periods, usually in the autumn of each year,
"the Sachems of the League assembled in council
"at Onondaga which was in effect the seat of gov- 141
"ernment, to legislate for the common welfare.
"Exigencies of a public or domestic character often
"led to the summoning of this council at extra-
"ordinary seasons, but the place was not confined
"to Onondaga. It could be appointed in the terri-
"tory of either of the nations, under established
"usages. Originally the subject of the general
"council was to raise up sachems to fill vacancies.
"In the course of time, as their intercourse with
"foreign nations became more important, it as-
"sumed the charge of all matters which concerned
"the League. It declared war and made peace,

142 "sent and received embassies, entered into treaties
"of alliance, regulated the affairs of subjugated
"nations, received new members into the League,
"extended its protection over feeble tribes, in a
"a word, took all needful measures to promote
"their prosperity, and enlarge their dominion.

"Notwithstanding the equality of rights, priv-
"ileges and powers between the members of this
"body of sachems, there were certain discrimina-
"tions between them which rendered some more
"dignified than others. The strongest illustration
"is found in the Onondaga sachem, To-do-da-ho,
"who has always been regarded as the most noble
143 "sachem of the League. As an acknowledgment of
"his eminence, two of the Onondaga sachems were
"assigned to him as hereditary councillors.

"At the establishment of the League, an Onon-
"daga by the name of To-do-da-ho had rendered
"himself a potent ruler, by the force of his mili-
"tary achievements. Tradition says that he had
"conquered the Cayugas and the Senecas. It rep-
"resents his head as covered with tangled serpents,
"and his look, when angry, as so terrible, that
"whoever looked upon him fell dead. It relates,
144 "that when the League was formed, the snakes
"were combed out of his hair by a Mohawk sachem,
"who was hence named Ha-yo-went-ha, 'the man
"'who combs.' To-do-da-ho was reluctant to con-
"sent to the new order of things, as he would
"thereby be shorn of his absolute power, and be
"placed among a number of equals. To remove
"these objections in some measure, and to com-
"memorate his magnanimity, the first sachemship
"was named after him, and was dignified above
"the others by special marks of honor; but such,
"however, as were in perfect consistency with an
"equal distribution of powers among all the sachems
"as a body. Down to the present day, among the

"Iroquois, this name is the personification of hero- 145
"ism, of forecast, and of dignity of character; and
"this title has ever been regarded as more illus-
"trious than any other, in the catalogue of Iroquois
"nobility.

"To several other of these officers or names,
"particular duties were affixed at the institution
"of the League. For example: The Senecas were
"made the door-keepers of the Long House; and
"having imposed upon Do-ne-ho-ga-weh, the eighth
"sachem, the duty of watching the door, they
"gave to him a sub-sachem, or assistant, to enable
"him to execute this trust. This sub-sachem was 146
"raised up at the same time with his superior,
"with the same forms and ceremonies, and re-
"ceived the name or title which was created simul-
"taneously with that of the sachemship. It was
"his duty to stand behind the sachem on all public
"occasions, and to act as his runner or attendant,
"as well as in the capacity of a counsellor. Ho-
"ho-we-na-to, the Onondaga sachem who was
"made the keeper of the wampum, had also a sub-
"sachem, or assistant. Several other sachems, to
"whom special responsibilities were confided, were
"allowed sub-sachems, to enable them to fulfill
"their du ies, or perhaps as a mark of honor. All 147
"of these special marks of distinction were con-
"sistent with perfect equality among the sachems,
"as members of one ruling body, in the adminis-
"tration of the affairs of the League. When their
"method of legislating is considered, this fact
"will appear with greater distinctness."

"The laws explained at different stages of the
"ceremonial, were repeated from strings of wam-
"pum into which they 'had been talked' at the
"time of their enactment. In the Indian method
"of expressing the idea, the string, or the belt
"can tell, by means of an interpreter, the exact

148 " law or transaction of which it was made, at the
" time, the sole evidence. It operates upon the
" principle of association, and thus seeks to give
" fidelity to the memory. These strings and belts
" were the only visible records of the Iroquois;
" and were of no use except by the aid of those
" special personages who could draw forth the
" secret records locked up in their remembrance.
" It is worthy of note, that but little importance
" was attached to a promise or assurance of a
" foreign power, unless belts or strings were given
" to preserve it in recollection. Verbal proposi-
" tions, or those not confirmed by wampum, were
149 " not considered worthy of special preservation.
" As the laws and usages of the Confederacy were
" intrusted to the guardianship of such strings,
" one of the Onondaga sachems, Ho-no-we-na-to,
" was constituted 'Keeper of the Wampum,' and
" was required to be versed in its interpretation."

May I have the wampums?

Mr Delehanty: Yes. (Produces wampums.) I will object to the receipt of any evidence of the character that Mr. Paige is reading to the Court, on the ground that it is not a proper subject or matter for the Court to take judicial
150 notice of; on the further ground that it is incompetent, immaterial, irrelevant and inadmissible.

The Court: I will take your objection, but I won't rule on it now. When I come to consider the case, if I rule against you I will give you an exception, and if I rule against Mr. Paige I will give him an exception.

(Mr. Paige exhibits to the Court wampum belts).

Mr. Paige: I now read from the first volume of Clark's "History of Onondaga County,"

published in 1849. You will admit Mr. Clark 151
is dead?

Mr. Delehanty: I presume he is. I don't know anything about it. I will take your statement.

The Court: It may be admitted that he is dead.

Mr. Delehanty: The further objection that it is conceded on its face that this is simply a local history.

The Court: I suppose the matter itself will show that, probably.

Mr. Paige: It is a history of the whole 152
Onondaga Nation.

"Os-sa-hin-ta, Captain Frost—This distin-
"guished chief of the Onondagas, who presided
"with great ability over the councils of the nation
"from 1830 to 1846, possessed a character and a
"name, which eminently deserves to be remem-
"bered. He was a cousin of the celebrated Oun-
"diaga, and a nephew of Kawhictoda. He was
"distinguished for the nobleness of his character,
"the peculiar fervidness of his eloquence, and his
"unimpeachable integrity—qualities which se-
"cured for him the unlimited confidence of his
"nation. His most distinguished associates have 153
"been Oh-he-nu (Captain Hannos), Oh-ka-a-yunkg
"(Onondaga Peter), Ka-ha-yent (Captain Joseph),
"O-gha-ta-kak (Captain Joseph 2d), *De-hat-ka-tons*
"(*Abram La Fort*), *and Ut-ha-wah* (*Captain*
"*Cold*). *This latter for a long time was keeper*
"*of the council fire of the Six Nations.*"

"The ancient Council-Fire of the Confederate
"Nations, from time immemorial, had always been
"kept alive at Onondaga, the central nation of the
"Confederacy. After their alliance with the Eng-
"lish in 1665, the fires of the United Councils of
"the two powers were kindled at Albany, and

154 " there, according to the figurative manner of
" Indian expression, was planted the great tree, to
" which was fastened the chain of friendship.
" With the close of the great council of 1775, that
" fire, which had so long kept burning, was ex-
" tinguished. It was the last Indian council held
" at the ancient Dutch capital. The great Council-
" Fire of the Six Nations was still kept alive at
" Onondaga till after the close of the revolution-
" ary war, at which time a portion of the Ononda-
" gas took up their abode on the Buffalo Creek
" Reservation, under the protection of the Senecas,
" and there was established the Council-Fire of the
155 " Six Nations. The Council-Fire was kept by
" Ut-ha-wah (Capt. Cold), an Onondaga, and the
" Senecas appropriated a mile square of land on
" their reservation, as a mark of distinction to the
" chief who kept it. Efforts have often been made
" by the Onondagas at home, to have the council-
" fire restored to its ancient hearth, but always
" without success until the Fall of 1847. The On-
" ondagas and Senecas on the Buffalo Reservation,
" seeing that their lands were like to pass from
" them, and thereby their removal become inevit-
" able, after the death of Capt. Cold, resolved to
156 " restore the sacred deposit to its ancient site.

" We would here remind the reader that what is
" termed the council-fire, is not, as is by many
" supposed, an actual fire, kept constantly burn-
" ing, but the place where their national records
" are kept, and belts, the memorials of treaties,
" deposited and preserved, and as such, the term
" is only used in a figurative sense. It is the place
" where all the national councils assemble, and
" where is retained the spirit and essence of their
" ceremonies and institutions. Important Indian
" councils are often held without actual fire.

" De-hat-ka-tons was at this time chosen keeper

" of the council-fire of the Six Nations. *These* 157
" *archives consist of various belts of wampum,*
" *some twenty-five or thirty in number, which the*
" *author has had the satisfaction of seeing (a*
" *sight rarely allowed a white man), with expla-*
" *nations from the keeper. Here is shown a belt,*
" *sixteen inches broad, by four feet long, repre-*
" *senting the first union and league of the Five*
" *Nations, and is called the 'Carpet' foundation*
" *or platform, or as we may better understand it,*
" *the constitution; literally, something to stand*
" *upon.*".

That is the belt that is in controversy in this 158
case (indicating).

Now if your Honor will look at the other belt while I read: " *The several nations are dis-*
" *tinguished by particular squares, and these are*
" *joined together by a line of white wampum, and*
" *united to a heart in the centre, implying the*
" *union of hand and heart as one. In connection*
" *with this is a second belt*"—if your Honor will look at that (indicating), " *having the figures of*
" *several chiefs wrought in the wampum, all hold-*
" *ing hands in a circle, which is to represent that*
" *there shall be no end to this league.*"

" *On one end is figured the Long House*"—my 159
claim is that he described these two belts by what I have just read—" *the great Cabin, which no*
" *new nation can enter until it has erected some*
" *little cabins around it; that is, the nation must*
" *perform some deeds worthy of note before it can*
" *be entitled to admission to the Great League in*
" *the Federation. Around this are five smaller*
" *cabins, emblems of the original Five Nations,*
" *before the league was formed, and on one side*
" *is a still smaller one, wrought since the first,*
" *representing the Tuscarora Nation, which was*
" *admitted at a subsequent period. Another long,*

160 *narrow belt*"—I ask your Honor to look at that belt—"*having a cross at one end and a long house* "*at the other, a narrow white stripe connecting* "*the long house and a large cross, was explained* "*as follows: 'Great many years ago,' a company* "*from Canada presented this belt, desiring that* "*missionaries, from the Roman Catholic Church,* "*might be settled among the Five Nations, and* "*erect a church at Onondaga, and that the road* "*should be continually kept open and free be-* "*tween them.*"

That would make it about 1646.

161 "*All the other belts were explained with par-* "*ticular minuteness.*

"*The bag which contains these relics is of itself* "*a singular curiosity. It is made of the finest* "*shreds of elm bark, and a person without being* "*apprised might easily mistake it for the softest* "*flax. Its capacity would exceed a bushel. This* "*bag is reputed to be as old as the league itself,* "*and certainly bears the marks of great an-* "*tiquity.*

"*The tubes or beads of wampum are of red,* "*dark blue, pale blue, black and white colors,* "*made of conch shell. They are about five-*
162 "*eighths of an inch long, about as large as a small* "*pipe-stem, and hollow, strung, woven and* "*wrought with sinews of deer and bark.*

"*The whole, to say the least, is a great cu-* "*riosity, and has undoubtedly been handed down* "*from a remote period. It is held as a sacred* "*treasure, preserved with great care, and looked* "*upon with peculiar reverence.*"

The Court sustained the objection as to the parts in italics and admitted the rest.

Mr. Paige excepted.

JOHN S. CLARK, sworn for plaintiff: 163

Examined by Mr. Paige:

Q. Your residence, Genera'? A. Auburn, this State.

Q. You have devoted much time in your life to Indian antiquities and to the establishment of sites of Indian villages? A. I have.

Q. Did you at any time see the wampum belts at Onondaga; if so, when and under what circumstances? A. I first saw the wampum belts in 1878 or '79. I visited their reservation in company with Horatio Hale, of Canada. They were explained at 164
that time to Mr. Hale and myself. I then secured permission at some future time to take a photograph of the belts. I think in January, 1879, or in January, 1880, I visited the Onondaga Reservation at the time of the burning of the white dog, in company with Mr. Spuyer, of Auburn, who is a professional photographer. After the ceremonies of burning the dog, we went to the house of Chief Harry Webster—I didn't know his given name; I always knew him by the name of Chief Webster. I can describe him. He was an oldish man at that time, I think about seventy years old; tall, reticent; he didn't like to speak English 165
much, but could understand it well. The belts then were in a sack or bag of Indian manufacture, and kept under his bed. He took them out, pinned them up on a white sheet and took a small photograph, a copy of which I sent to you at one time. This is one of the photographs (indicating), and underneath is a second one.

(Marked Exhibit 3. F. J. M.)

Q. Exhibit 3, containing two photographs, are the photographs of the wampum belts in question? A. Yes, sir. At that time a copy of the photograph was sent to Washington by Dr. Beauchamp,

166 of Baldwinsville, from which engravings were made, which appear in the second volume of the Annual Report of the Bureau of Ethnology.

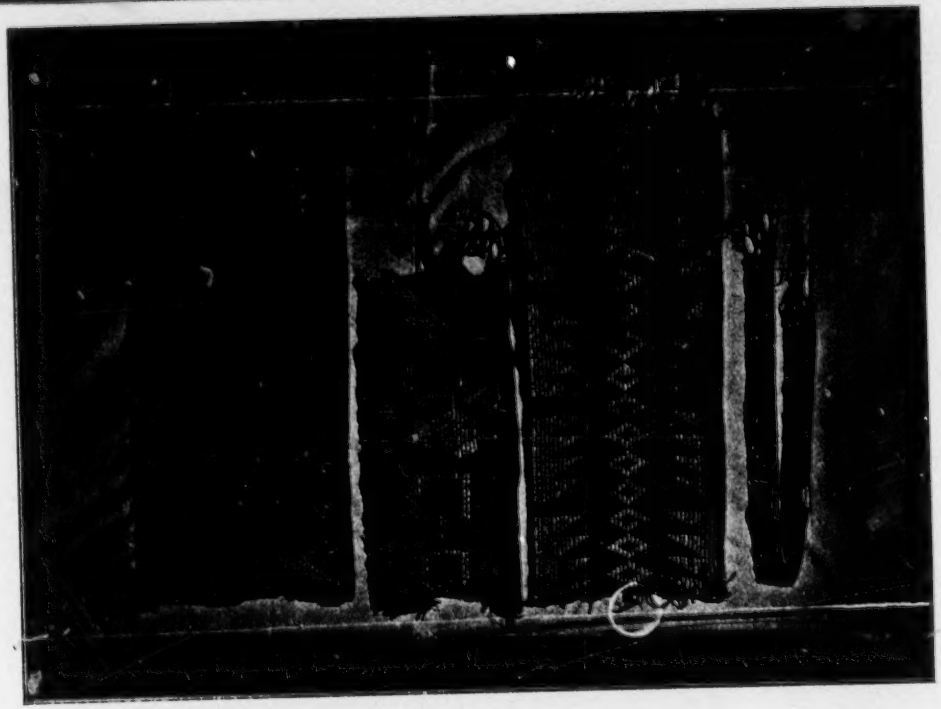
(Volume marked Exhibit 4, F. J. M., for identification.)

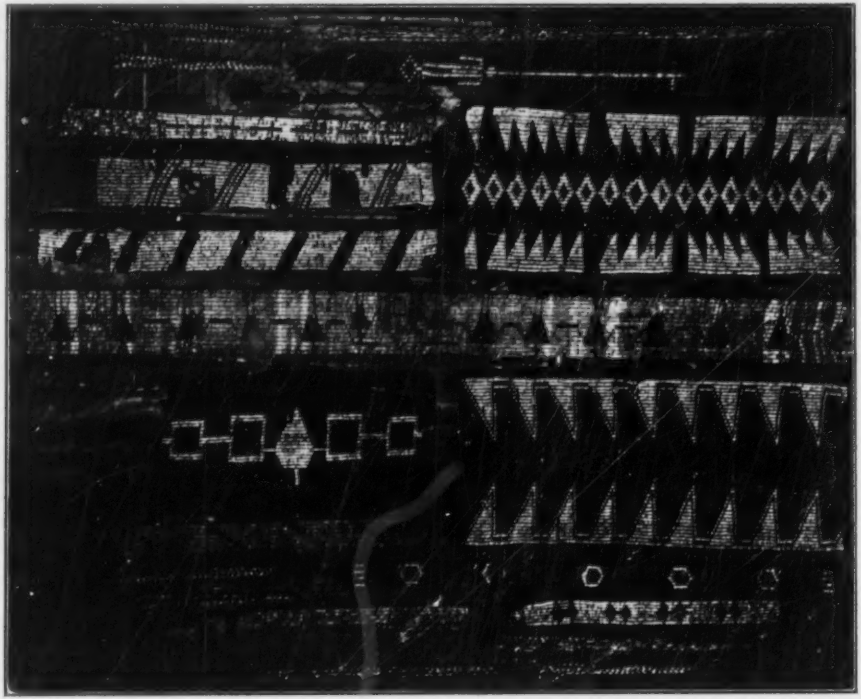
Q. Is that the volume which you have just described, Exhibit 4? A. Yes, sir; that is the volume. That is one of the belts facing page 240; facing page 244 are three other of the belts; facing page 248 is another of the belts; facing page 252 is another one, and facing page 254 are strings of wampum. They were put in different shapes and were made up at Washington from that photo-
167 graph.

Mr. Paige: I will offer Exhibit 3 and the photographs from Exhibit 4 in evidence.

Exhibit 3.

168





The Witness: I was not entirely pleased with those photographs, and I made an arrangement with Chief Daniel La Forte that Chief Webster should meet me at Syracuse, I think at the Vanderbilt House, and take photographs again of the same belts, which were brought there by Chief Webster. In this case they all appear upon a single sheet. (Producing photograph.) 169

(Marked Exhibit 5, F. J. M., for identification.)

Q. Is Exhibit 5 that photograph? A. That is the photograph. The belts that appear upon this photograph are the same as I have described previously. 170

Mr. Paige: I will offer Exhibit 5 in evidence.

Exhibit 5.

171

172 *By Mr. Paige:*

Q. What is the date of this second taking of the photograph? A. I think it was in 1880.

Q. This last photograph? A. Yes, sir.

Q. Were you told what was Chief Webster's official position? A. Yes, sir.

Mr. Delehanty: I object to that on the ground that it is incompetent, immaterial and irrelevant; that the witness has not been shown to have sufficient knowledge to know anything about what his official title was; it is simply hearsay.

173 The Court sustained the objection.

Mr. Paige excepted.

Q. What were you told was his position? Same objection. A. Wampum keeper; keeper of the wampum.

Q. By whom were you told that? A. Chief Daniel La Forte and Mr. Alfred Cusick, who was the interpreter at the time.

Q. Did he hold any official position? Was he a chief? A. I don't know, except by reputation. He was there and Daniel La Forte was there.

Q. What was Cusick by reputation? A. I think he was official interpreter.

174 Q. Anybody else?

Mr. Delehanty: I move to strike out the answer on the ground that it appears that the statements were made to him by two gentlemen who are still alive.

The Court: Evidence stricken out. Exception.

By Mr. Paige:

Q. Anybody else? A. Not that I remember now by name.

Q. Anybody whom you don't remember by name? Did you hear it otherwise? A. Yes, sir.

The Court: I will take all this evidence under the objections already made, and subject to a motion which may be made hereafter to strike it out. 175

By Mr. Paige:

Q. So far as you can remember, who were the remaining persons? A. The only ones I remember is Daniel La Forte and Mr. Cusick.

Q. But you do remember you heard it through other persons? A. Yes, sir.

Q. At Onondaga? A. At Onondaga Castle.

Evidence out.

Exception. 176

Q. Were any wampums read to you? A. They were explained to myself and Mr. Hale of Canada, principally by Daniel La Forte.

Q. Is that one of those wampums?

Mr. Paige: I show the witness the large wampum In the lower right-hand picture preceding page 473 of Exhibit 1.

The Court: That is the large dark one?

The Witness: That is the one I saw at that time.

By Mr. Paige: 177

Q. What was the reading given of that? A. That it was made at the formation of the League representing the Five Nations united together by white lines through the central part of the nations.

The Witness: It was given by Daniel La Forte in person. I don't know what authority he had.

Mr. Delehanty: I make the additional objection that Daniel La Forte is still alive and is one of the plaintiffs in this action. It is not the best evidence.

The Court: All right.

178 *By Mr. Paige:*

Q. Was that reading given by Daniel La Forte in the presence of Webster? A. Yes, sir.

Q. I now show you another wampum, which is the upper one upon the same diagram of Ex. 1. Is that one of the wampums? A. It is; yes, sir.

Q. Which you saw upon all three of those occasions? A. Yes, sir.

Q. Was the reading of that wampum given you? A. Yes, sir.

Q. What was it? A. This was represented to be the belt that was made at the first treaty of the
179 Five Nations with the general government at the time of the Revolutionary War, in which the thirteen states are represented by human figures and the Five Nations are represented in the centre. The thirteen states represented as holding hands and connected with the central figure, who was To-do-da-ho, I suppose. I took no notes at the time. I depend upon recollection.

Q. I show you another wampum, which is the one just below the big piece upon the diagram already mentioned, Ex. 1. Is that one of the wampums you saw upon those three occasions? A. Yes, sir.

180 Q. Do you remember the reading of that wampum? A. I do not.

Q. I show the witness another wampum, which is the fourth wampum represented upon the same diagram of Ex. 1. Is that one of the wampums you saw upon that occasion? A. Yes, sir.

Q. Do you remember the reading of that wampum? A. I do not. It has changed considerably from what it was then. A good many beads were lost. But this particular rent or tear was in it at the time, I remember, or that—or both. I think both of them were.

Q. The rents near the two ends? A. Yes, sir.

Cross-examination by Mr. Delehanty: 181

Q. Daniel La Forte is still alive, is he not? A. I think he is, sir.

Mr. Paige: He is dying.

Q. He resides on the Onondaga Reservation? A. He did all the time I have known him.

Q. In this County? A. Yes, sir.

Q. Do you know whether Mr. Cusick is still alive? A. I presume so; I have not heard of his death. I have not seen him in fifteen years.

Q. Do you know the Indian name of Daniel La Forte? A. I do not.

Mr. Delehanty: I presume it will be conceded that he is the person referred to in the title as the plaintiff Te-hes-ha? 182

Mr. Paige: I would rather not concede it, but you may prove it.

It is admitted that both Harry Webster and Thomas Webster are dead, and that Thomas Webster was the son of Harry Webster, and that Thomas Webster died the 3d of July, 1897.

I will offer in evidence minutes of a Council held by the Onondagas on the 26th of Febuary, 1898.

You do not object on the ground that the signatures are not proved? 183

Mr. Delehanty: No. I will admit that is a genuine document, and the genuine signatures are there.

184 REGENTS MINUTES, 22 March, 1898

ACTION OF ONONDAGA CHIEFS

At a council of the Onondaga nation held at the house of Daniel La Forte in Onondaga on the 26th day of February 1898 held pursuant to call and notice given to all the chiefs.

Present

Te-hes-ha	Daniel La Forte, *president*	
Say-ha-que	Baptist Thomas, *treasurer*	
Ah-wa-ga-yat	Orris Farmer, *secretary of the nation*	
185 Ha-say-gwa-e-say	Jacob Skenandoah	*sachems and chiefs*
So-day-qua-scum	Asa Wheelbarrow	
Sa-da-qua-seh	Jacob Bigbear	
Ha-e-ho	Levi Webster	
O-gayis-qua	John Farmer	
Ho-yo-ne-a-ne	William Webster	
Ga-na-ha-guh-yat	Wallace Carpenter	
Ha-wen-jo-wah-e	Enoch Skenandoah	
Hos-hay-qua	Charles Lyon	

The following resolutions were unanimously adopted.

Resolved, That the University of the State of New York be and it hereby is elected wampum keeper of the Onondaga nation, with full power
186 and it shall be its duty to get possession of and safely keep forever all wampums of the Onondaga nation and the Five nations and Six nations and each of them.

Whereupon the University of the State of New York was unanimously elected to the office of wampum-keeper.

The following resolution was also unanimously adopted:

Resolved, That the Onondaga nation does hereby sell to the University of the State of New York all wampums for $500, and that the sachems and

chiefs present all execute a bill of sale for the nation. 187

A true copy from the minutes

Say-ha-que	Baptist his x mark Thomas
Sa-da-qua-seh	Jacob his x mark Bigbear
Ha-wen-jo-wah-e	Enoch Scanandoah
Ha-say-gwa e-say	Jacob A. Scanadoah
Ha-e-ho	Levi his x mark Webster
Ho-yo-ne-a-ne	William his x mark Webster
O-gayis-qua	John R. Farmer 188
Ga-na-ha-guh-yat	Wallace his x mark Carpenter
So-day-qua-scum	Asa his x mark Wheelbarrow
Ah-wa-ga-yat	Orris Farmer
Te-hes-ha	Daniel La Forte
Hos-hay-qua	Charles Lyon

In presence of
Harriet Maxwell Converse
A. G. Richmond
Edward Winslow Paige

KNOW ALL MEN BY THESE PRESENTS that the Onondaga nation does hereby sell, assign and transfer and set over unto the University of the State of New York all wampums, in belts, strings or otherwise, of which it ever had possession or was entitled to the possession of, and all its right, title and interest to any and all wampums anywhere, in consideration of $500. 189

And it is hereby made the attorney in fact of the Onondaga nation and the individual sachems and chiefs who are here, irrevocable, but at its own cost and expense, to recover the possession of the said wampums by suit or otherwise in the name of

190 the Onondaga nation or of any or all of the sachems and chiefs undersigned either as such sachems and chiefs or individually.

WITNESS the hands of the said undersigned sachems and chiefs and seals individually and the Onondaga nation by its secretary, in pursuance of a resolution of its grand council adopted on this 26th day of February, 1898.

THE ONONDAGA NATION

by

O-yah-ge-wick	Orris Farmer, *secretary*	(seal)
Say-ha-que	Baptist his x mark Thomas	(seal)
191		
Sa-da-qua-seh	Jacob his x mark Bigbear	(seal)
Ha-wen-jo-wah-e	Enoch Scanandoah	(seal)
Ha-say-gwa-e-say	Jacob A. Scanadoah	(seal)
Ha-e-ho	Levi his x mark Webster	(seal)
Ho-yo-ne-a-ne	William his x mark Webster	(seal)
O-gayis-qua	John R. Farmer	(seal)
Ga-na-ha-guh-yat	Wallace his x mark Carpenter	(seal)
So-day-qua-scum	Asa his x mark Wheelbarrow	(seal)
192		
O-yah-ge-wick	Orris Farmer	(seal)
Te-hes-ha	Daniel La Forte	(seal)
Hos-hay-qua	Charles Lyon	(seal)

In presence of
Harriet Maxwell Converse
A. G. Richmond
Edward Winslow Paige

That is signed by the twelve chiefs and three witnesses.

I will read in evidence the following bill of sale:

KNOW ALL MEN BY THESE PRESENTS that the ONONDAGA NATION does hereby sell, assign and

transfer and set over unto the UNIVERSITY OF THE STATE OF NEW YORK all wampuns in belts, strings or otherwise, of which it ever had possession or was entitled to the possession of, and all its right, title and interest to any and all wampums any where, in consideration of five hundred dollars. 193

And it is hereby made the attorney in fact of the Onondaga Nation and the individual sachem chiefs who are here, irrevocable, but at its own cost and expense, to recover the possession of the said wampuns by suit or otherwise in the name of the Onondaga Nation, or of any or all of the sachem chiefs undersigned, either as such sachem chiefs or individually. 194

Witness the hands of the said undersigned sachem chiefs and seals individually, and the Onondaga Nation by its Secretary, in pursuance of a resolution of its Grand Council, adopted on this twenty-sixth day of February, one thousand eight hundred and ninety-eight.

THE ONONDAGA NATION,
by
O-yah-ge-wick,
Orris Farmer,
Sec Nation (seal)

195

Say-ha-que	his mark Baptist x Thomas	
Ta-yet-qua-say	his mark Jacob x Bigbear	(seal)
Ha-wen-jo-wah-e	Enoch Scanandoah	(seal)
Ha-say-gwa-e-say	Jacob A. Scanadoah	(seal)
Ha-he-nun	his mark Levi x Webster	(seal)
O-gnun-ne	his mark William x Webster	(seal)
O-gayis-qua	John R. Farmer	(seal)
Ga-na-ha-guh-yat	his mark Wallace x Carpenter	(seal)
So-day-qua-scum	his mark Asa x Wheelbarrow	(seal)

196	O-yah-ge-wick	Orris Farmer	(seal)
	Te-hes-ha	Daniel LaFort	(seal)
	Hos-hay-qua	Charles Lyon	(seal)

In presence of:

HARRIET MAXWELL CONVERSE,
A. G. RICHMOND,
EDWARD WINSLOW PAIGE.

It is admitted that Say-ha-que and Hos-hay-qua, two of the plaintiffs whose names have been added to the title in this case, are persons who signed both papers.

And that Te-hes-ha has also signed these
197 papers. And it will appear that Te-hes-ha and Daniel La Forte are the same person.

Mr. Paige: I don't make that last admission, but the papers show it.

I will put in from the record book of the Onondaga Nation the constitution with which the Nation is at present governed. I will have a copy sent to the stenographer. That will be Ex. 8.

PLAINTIFF'S REST.

Mr. Paige: I would like to, if Mr. Delehanty will allow it, make a statement as to
198 Daniel La Forte's condition of health.

Mr. Delehanty: Yes.

The Court: To be taken as evidence?

Mr. Paige: Yes, sir. He is unable either to stand up or lie down; he has to sit in a chair continually; he is not expected to live more than a few days, possibly a week or two.

Mr. Delehanty: I don't object to the statement as to the form of it; but I object to it on the ground that it is immaterial. If Mr. La Forte is ill, his testimony could have been taken and produced here before us.

Mr. Paige: But it cannot be done now.

(Mr. Delehanty states the case to the Court in behalf of the defendant.)

Mr. Delehanty: I offer in evidence the three letters written by Melvil Dewey set up in the answer, which I will show to the Court. I will not stop to read them. They were written by Melvil Dewey to John Boyd Thacher, in response to which the letters set up in the complaint as having been written by Mr. Thacher were written. They appear in the answer which will be submitted to the Court.

The Court: These letters are set out in full in the answer?

Mr. Delehanty: Yes, sir.

The Court: They may be deemed in evidence.

Mr. Delehanty: I offer the deposition of Gen. Henry B. Carrington.

Mr. Paige: Shall we make the same stipulation in regard to General Clark's testimony that we made in regard to Gen. Carrington's, that it may be used in all other cases?

Mr. Delehanty: Yes.

Mr. Paige: The same stipulation that is made at the beginning of Gen. Carrington's deposition?

Mr. Delehanty: Yes.

The Court: That is not important in this suit.

Mr. Delehanty: Not at all.

Mr. Paige: The deposition carries with it the two reports?

Mr. Delehanty: Yes.

The Court: They may be deemed in evidence.

(Print the deposition and attached letters and such parts of the report as plaintiffs want. The whole report to be used on argument if either party desires.)

202 DEPOSITION.

NEW YORK, Nov. 30th, 1898.

Testimony taken at No. 44 Cedar Street, N. Y., on behalf of the defendant.

Appearances:

EDWARD WINSLOW PAIGE, for Plaintiffs,
JOHN A. DELEHANTY, for Defendant.

It is stipulated and agreed that the deposition of Henry B. Carrington, now to be taken, may be read in evidence from the stenographer's transcript,
203 upon the trial of this action, or of any other action brought to recover the same wampums that are at controversy in this action

HENRY B. CARRINGTON, called on behalf of defendant, testified as under oath as follows:

Examined by Mr. Delehanty:

Q. You are an officer of the United States Regular Army? A. Yes, sir.

Q. And what is your official title? A. I have two; General in the Volunteer Army and Colonel in the United States Army, retired.

204 Q. Where do you reside? A. Hyde Park, Mass.

Q. Are you the same person mentioned by the name of Carrington in the complaint in this action who is alleged to have sold to the Rev. Dr. Oliver Crane certain belts of wampum that are described in the complaint? A. Yes, I am.

Q. Are you familiar with the history, tradition and customs of the Iroquois Indians, formerly known as the League of Five Nations and thereafter as the League of Six Nations? A. As far as any published books of fact or tradition, and personal inquiry with every responsible Indian living among the Six Nations in 1890 could inform me.

Q. Are you the author of the article or report on 205
the condition of the New York State Indians, published in the Indian Volume of the 11th Federal Census? A. The report in said Volume is insufficient and is not an accurate copy of my official report to the government. I have a duplicate manuscript report as made to the government and the same was carefully printed and is a part of a Special Bulletin, but in the transfer of the Indian Branch of the Census Bureau from Superintendent Porter to Commissioner of Labor Wright, said Wright claimed as his prerogative to edit the large volume. After it had been printed and I had 206
elaborately indexed every report from every Indian Agent and every Census Agent of all the Indians of the United States, in this re editing a dispute arose between said Wright and Thomas Donaldson, in charge of the Indian Census, and as a result of the dispute Mr. Wright eliminated much matter, abbreviating, especially, that regarding the Six Nations. My report, however, had already been printed as a Special Bulletin by the Interior Department, and that is my true report, afterwards condensed into the large volume. In other words, the so-called report contained in the volume that I have referred to is a condensation from my official 207
report.

Q. The maps that appear in that report were made by you, or under your supervision? A. My own surveys; my own drawings.

Q. What authority did you have for making the investigation that you did prior to the preparation of your report; in what capacity, in other words, did you go—what official capacity, if any? A. Well, my large experience while in command of the Rocky Mountain Department, in opening the first wagon route to Montana amid hostilities and my familiarity with the language and customs of

208 the Indians beyond the Mississippi; many years of laborious study into the antecedents of the North American Indians, including the Six Nations in Canada and America, induced the government to ask me that I take charge of the Indian Census east of the Rocky Mountains and as far south as Louisiana. Other engagements rendered it necessary for me to limit the scope of the proposition made and I did prosecute the work among the Six Nations of New York and the Cherokees of North Carolina. In New York State I was occupied ten months continuously. I visited and located every
209 family, as will appear from maps in my report as published by the government drawn by me.

The Special Bulletin, to which reference is made above, is marked by the stenographer as Exhibit A.

Q. Did you make any special investigation at that time to ascertain if any wampums, or belts of wampum, had been preserved by any of the Indians or persons constituting the tribes that are referred to as the Six Nations? A. My orders from Washington instructed me to make the most thorough examination possible, especially among old men and women, of every manner of tradition or relic
210 that reflected light upon their antecedent history, and to secure from any chance of loss, if possible, anything that would contribute to the general knowledge regarding the Iroquois Confederacy and its members. Among the Allegany Senecas on the Cattaraugus Reservation, by special permission, I attended their pagan dances and festivals during the Winter of 1890–91 and with an interpreter interrogated all the old men and women, I think without exception, as to the traditionary history of their people. At the close of one pagan dance I secured a turtle rattle used in the ceremony. I also secured, from time to time, some leggings and

other curios, but in no case could I find, either among the pagan element, which alone cherished these old relics, or among the Christian element, so called, any wampum whatever. I attended the council at their court house, called upon very special matters vital to the land titles of the Seneca Indians, and made an appeal to the chiefs there represented to hunt up for my record anything, whether of wampum, silver ornament or other old things, that would aid me in an intelligent recital of their old history. In the matter of wampum, several of the Indians told me that Mr. Bryant, of Buffalo, could give me better information as to old relics than any white man, and that Thomas Webster, of Onondaga, who had spent a good deal of time in collecting old relics, wampums particularly, could also, perhaps, aid me. I went into Buffalo the next day, saw Mr. Bryant and he showed me a wampum for which he had paid $25, only several days before, during a visit in Canada, naming the chief, who had three or four more; but as they were getting very scarce he did not think he would sell them. 211 212

Among the Allegany Senecas, whose reservation centres about Salamanca, there was absolutely no knowledge whatever of the existence of any wampum, except that Andrew John, then president, told me he did not believe I would ever be able to get any, unless I could get them from Thomas Webster, of Onondaga, who used to have quite a collection. Among the Tonawanda Senecas, near Akron, I found several very aged pagan Indians, but no relics of very considerable relation to the past. The Tuscarora Indians had nothing of the kind. Mrs. Caroline Mountpleasant, the Peacemaker queen, and sister of Colonel Parker, of General Grant's staff, with whom I spent a week and had several interviews, endeavored with me to 213

214 hunt up wampums or other documentary matter, if possible, on the reservation. Nothing could be found in the way of wampums and my report will show how much tradition I was able to procure. She accompanied me to several of the old families. Mr. Johnson, called the historian of that tribe, equally failed to secure other data than that embraced in my report.

Among the Saint Regis Indians, representative of the old Mohawk stock, I found that their traditions, so far as preserved, chiefly centred about the settlement founded by Saint Regis, the French Jesuit, and the antecedents of the Tarbell family,
215 whose first representatives had been stolen from Groton, Mass., during the Indian invasion from Canada. I visited the grandson, a very old man, survivor of the Tarbell chiefs, taking with me a photograph, which is in the Bulletin marked "A," next after page 32, entitled "Reading the Wampums, 1890." I thought I had reached the fountain-head of inquiry as to wampums, but found none of the wampums exhibited in that photograph, being informed that all belonged on the Canadian side of the river and were owned by Indians there. Several of the old men told me that Thomas Web-
216 ster, of Onondaga, came almost every year to visit their pagan festivals and had several very good wampums; that the Canadian Indians had refused to sell any more of their wampums and that unless I could get some from Webster they did not know where I could get any.

Q. Did you make any investigation among the Indians in Canada in regard to the question of whether they had any wampums in their possession, further than your statement? A. I made application to Indians three different times; I sought three different times to get some, but they refused to sell.

Q. Did you see any wampums there? A. No, 217
sir; never saw any there.

Q. Do you remember the Indians that you interviewed on the subject; do you remember who they were? A. I wrote very full daily letters home, which I intended for binding, but they were destroyed by the burning of my house.

Q. Did you go among the Cayugas or the Oneidas for the purpose of discovering whether they had any wampums? A. As far as the Oneidas and Cayugas are concerned, I visited a few families, but they have hardly legal status, having formally sold their lands in New York and gone to the 218
West.

Q. Did you visit the Onondaga Nation or Tribe? A. At the Onondagas I found no relics of value until I called with President La Forte upon Thomas Webster to verify references made to him as the possessor of wampums. It was twice or three times of calling before the old man would show me the wampums——

Q. When you say the "old man," you refer to Thomas Webster? A. Yes, sir; I was at the time occupying the house of Chief La Forte with my secretary. I told him of my inquiries made elsewhere and he said that he would secure me 219
access to Webster's collection; that some of them he had a good many years, and he claimed that upon examining them he could read the ancient history of the Six Nations. He said, "Perhaps he will spare you one or two. No one has any interest in them now except himself, and he keeps them as relics of old times." He went to Webster and brought an old valise, very dilapidated, and tied with a rope, which had been under his bed, and we examined the wampums together. A large number of beads were loose and he gave what, as far as he could, was his idea of the original mean-

220 ing of the wampums. I impressed upon him as well as I could the importance of their being safely preserved somewhere and that if he chose to have me take charge of them, or any of them, I would guarantee that, either at Washington or elsewhere, in some safe place, they would be carefully and permanently preserved. After some reluctance he consented to come into Syracuse and bring the valise and give me permission to have photographs taken.

Mr. Paige: This is Webster? A. Webster.

(Witness continuing) I did this so that in case
221 he declined to sell any to the Government I would at least preserve the appearance of them. He entrusted me with the valise, returned to the Reservation, I had them photographed and returned them to him.

Mr. Paige: Is the picture, to face page 33 of the Bulletin, entitled "Historic Wampums —Six Nations," a copy of those photographs? A. The photographs in Bulletin, opposite page 33, entitled "Historic Wampums—Six Nations," are prints from those plates.

Q. And they include all of the wampums that he had? A. Yes, sir; that is all the
222 wampums that were in the valise.

Q. That engraving represents all the wampums that were in the valise? A. Yes, sir.

Q. And one of them is pictured twice, being the lower one on the lower right-hand picture? A. Yes, sir.

(Witness continuing) Shortly after Chief La Forte told me that Webster would dispose of a portion of them; he was afraid that they would be lost or stolen and he would bring them over and talk with me about them. No funds had been placed at my disposal by the Government——

Mr. Delehanty (interrupting): By the Gov-

ernment? A. Yes; by the Government, but 223
all expenses and purchases were reported to Washington for allowance or disallowance and payment. Mr. Webster at the time was very poor, anxious for a horse and wagon, and told me to take four or five of the wampums and see what I could give him for them. The thirteen figures was the wampum that seemed to me——

MR. PAIGE (interrupting):

Q. Upper wampum of the lower right-hand picture? A. Upper wampum of the lower right-hand picture; yes, sir. 224

(Witness continuing)—seemed to me to have more of national interest ——

MR. PAIGE (interrupting):

Q. Why? A. Why, because it represented the thirteen colonies, seven on one side and six on the other, commemorating the treaty of Washington with the Six Nations.

Q. So that the belt represents the treaty which Gen. Washington made with the Six Nations? A. It represents the Indian idea of that treaty.

Q. It was made to commemorate that treaty? A. Yes, sir; that is what I understand, I understand it so. It struck me that there was a sensible 225
historical factor that had interest.

(Witness continuing) At that time I had no funds of my own available, but felt confident that the expense was within my instructions and would be allowed, and I agreed to pay him as soon as I could get to Syracuse and return $75.00, which he and the chief said he needed to secure his horse and wagon outfit.

MR. PAIGE:

Q. When you say the chief, you mean Daniel La Forte? A. Yes, sir; all the negotiations were made through Chief Daniel La Forte.

226 MR. DELEHANTY:

Q. Did you give him the money? A. I paid him the $75.00 and took his receipt.

Q. You paid Webster the $75.00? A. Yes; in the presence of Daniel La Forte, who witnessed his signature to the receipt.

Q. Witnessed the signature on the receipt given to you by Webster for the money? A. Yes, sir.

Q. (Showing witness paper) Is that the signature of Daniel La Forte on the receipt? A. Yes, sir.

Q. Is that the mark of Thomas Webster? A. Yes, sir.

227 MR. DELEHANTY: I offer the receipt in evidence. The receipt is marked by the stenographer Exhibit "B."

Mr. Paige reads the said receipt as follows:

"Received from seventy-five
"dollars, $75.00

his
THOMAS x WEBSTER.
mark.

"Witness,
"DANIEL LAFORTE."

Written at the top are the words and figures:

228 "Syracuse, N. Y., Feb. 10, 1891," which Gen. Carrington says he wrote in this morning.

WITNESS: Yes, sir.

MR. DELEHANTY:

Q. The receipt reads: "Received from $75.00." Will you explain why the person or body from whom the money was received was left blank? A. It was left blank until I could receive response from Washington as to whether the purchase would be recognized as an official purchase or only be treated as a personal purchase.

Q. Did you ever receive any such authority to have it recognized as an official purchase? A. I

did not; it was disallowed. I was instructed to 229
make any purchase if I thought it best for the public care, but the government would not refund me.

Q. How long did you remain at the home of Daniel La Forte on that occasion? A. I couldn't tell within several weeks.

Q. Several weeks? A. I forget whether it was six or seven weeks: nearly two months.

Q. During that time, or any other time, did Daniel LaForte say to you that Thomas Webster held any official position as wampum keeper, or otherwise? A. No; Mr. Webster called himself 230
wampum-keeper because he was the only man that had the wampums and kept them, and so cherishing the tradition as wampum-keeper, and I treated him in my report as wampum-keeper, but I did not know him officially as such. Daniel La Forte treated Webster as tradition treats a person who collects postage stamps and such things, and as such is the possessor of national or family association.

Q. Did La Forte say to you that the Onondaga tribe or nation was the owner of any these wampums? A. He did not, and no Indian in Onondaga (and I saw most of them) claimed that anybody but Webster had the absolute control of them. It 231
never was true nor pretended.

Q. Did you at any time throughout your investigations, either in reply to any inquiries made by you or otherwise, hear any Indian of the Six Nations make any statement to the effect that the wampums were anything else but curiosities or relics, or had at the present time any other significance? A. Yes, sir. Quite a good many of the Indians felt that Webster's reading of them was not altogether fanciful, but had its historical value, and they were very glad that they were going to be saved and kept somewhere and not lost. It was

said that Webster really seemed to have second-sight and seemed to see things through those wampums that others did not see—seemed to see historical significance.

Q. This is what La Forte said? A. Yes, Webster seemed to see historical antecedents in these wampums.

Q. That is what La Forte said? A. Yes, sir. In other words, Webster's looking upon these wampums was not considered merely a curious inspection but that there was a history of a people involved in them, and he seemed to get grotesque things out of them.

Q. Did either Webster or La Forte say anything to you in regard to where he had obtained these wampums—this collection of wampums? A. Well, I think in regard to one or two, I asked him how long ——

Q. (Interrupting) You say you asked La Forte how long he had them? A. Yes, and he asked Webster and my impression is that he had one or two of them for quite a number of years, I don't know but he said, it seems to me, as long ago as his father's time—his father had them; that's my impression. One or two of them he brought from Canada.

Q. He also stated he brought them from Canada? A. He got them in Canada.

Q. Did he say he brought or bought them in Canada? A. He got them in Canada.

Q. One or two he got in Canada? A. Yes, sir.

Q. Did he say whom he got those which he got in Canada from? A. No. In dealing with Mr. Webster and securing the wampums it will appear from my report that I endeavored to give as much significance as possible to these wampums in his father's hands for the sake of verifying the general history of the Six Nations.

Q. In your report you also state that they, re- 235
ferring to the wampums, are simply monumental reminders of preserved tradition without any literal details whatever; as curios, and relics, they are valuable; will you state what you refer by that expression—what do you mean by that expression? A. I mean just what it says. The words "literal details" are met by what I have said before about vague expressions.

Q. In the affidavit which you verified on the application for the appointment of a Receiver, which I have here in my hands, you say that nobody among the tribes, or any of them, so far as you were able to learn, disputed Webster's individual 236
ownership of the wampums, is that a fact? A. I never heard it disputed.

Q. And you say—you assert—that no one beyond Webster had any wampums, or claimed any right to any? A. That is true, no one other than Webster claimed right to the wampums held by him.

Q. After you purchased these wampums, how long did you retain possession of them? A. I can't answer that exactly.

Q. But you sold them to Dr. Crane? A. As soon as I found that the goverment would not take them, I had prepared a very fine ash case with plate 237
glass front screwed on, in order to have them exhibited by the Boston Art Museum or the Smithsonian, in case either chose to make themselves the depository. Dr. Crane was also a Yale man and my class secretary, and proposed if I would turn them over to him for deposit in the Art Museum in Boston, or for the Yale Museum, he would pay what was due on the publication of my "Periodic Reader," and in which I had been embarrassed by the purchase of these wampums, and he did so.

Mr. Paige: Q. How much? A. $350.

Mr. Delehanty: Q. When Dr. Crane was about to dispose of the wampums, as he afterwards did by

238 selling them to Mr. Thacher, were you consulted in regard to what you considered a fair price that should be given for them? A. I was.

Q. And did you give any price that you thought a fair one to be paid? A. I gave the opinion that the lowest price that they should be sold for should be $500, that was the lowest.

Q. Whom did you give that price to? A. Dr. Crane.

Q. Do you know whether these wampums after they parted from your possession were publicly exhibited? A. They were publicly exhibited in the Boston Art Museum with the view to have them
239 purchased, but they had no funds available.

Cross-examined by Mr. Paige:

Q. General, how many wampums did you received from Webster? A. I think it was five.

Q. Five? A. I think so.

Mr. Paige: I show General Carrington the Indian Volume of the Census Report of 1890, which I ask the stenographer to mark Pl'ffs. Exhibit 1. (Marked Exhibit 1.)

Q. Is that the book you have spoken of as containing a condensation of Exhibit "A"? A. Yes, sir.

240 Q. The wampums represented in the lower right-hand corner picture of the plate entitled "Historic Wampums" which you have testified about, did you receive all the wampums there pictured from Webster? A. Yes, sir, I did.

Q. And did you receive any others from him than those four? A. My impression is that I received five, which I could verify by a photograph of the case at home, which I will forward you.

Q. You have a photograph at home of all the wampums which you received from Webster, and you say that you will send me it so that it may be attached to this deposition? A. Yes, sir.

Q. If you received a fifth wampum, did you also deliver that to Dr. Crane? A. Yes, sir; whatever I received went into that case, which was forwarded by his order while he was south to Mr. Thacher. 241

Q. So that whatever you got from Webster went into that case to Thacher? A. Yes, sir, and the case was screwed up, and it is described by that photograph which I will send you.

Q. If there were a fifth, can you tell me which one it was from the picture I show you? A. I cannot.

Q. In regard to the four wampums in the lower right-hand picture, you have already given the reading of the figures holding hands, what, as you are informed, is the reading of the large piece with the heart in the middle? A. My impression is that that represents the central one—the heart of the Five Nations. 242

Q. Is that the so-called Hia-wat-ha belt? A. There has been a dispute about that; my impression is that it ought to be regarded as the Hia-watha belt.

Q. Can you give me the reading of the one next below that—the one with the rings? A. That is simply a Five Nations belt—represents the Five Nations. 243

Q. Made to represent the union of the Five Nations—I am quoting Mr. Sanborn's receipt? A. Yes, sir; there was no meaning. It is a belt of the Five Nations before the Tuscaroras joined.

Q. Can you give me the reading of the fourth belt, that has pieces broken out of it, hanging at the bottom of the picture. Perhaps it will refresh your memory if I say that Sanborn's receipt says it represents the first coming of the people with white faces; can you recollect? A. I remember one thing about that that comes to my mind now, that the deer skin were very old, and I place that

244 antecedent among the earliest of the wampums that are preserved.

Q. Among the earliest of the wampums that are preserved? A. Yes, sir.

Q. That would be as early as 1540, wouldn't it? A. Yes, sir, as near; that is all vague.

Q. That is the way you suppose it? A. Yes, sir.

Q. I call your attention to the upper left-hand picture of the plate "Historic Wampums;" you designate it as the Presidentia of the Iroquois 1540; what do you mean by Presidentia? A. They had sometimes mats, sometimes a badge em-
245 blem——

Q. (Interrupting) What do you mean by Presidentia? A. Representative—I got that from Webster.

Q. What do you mean by that word? A. Used in the Council when the Confederacy met in session.

Q. Now, General, what you have spoken, I suppose you also mean the same of the upper right-hand picture (showing)? A. Yes, sir; we call them, speaking familiarly, Six Nations in Canada, but not here. Until the Tuscaroras joined there
246 were only five in the old confederacy.

Q. There were only five until the Tuscaroras joined? A. Yes, sir.

Q. The Tuscaroras joined in 1713? A. Yes, sir.

Q. The two upper plates you suppose to be about the date of 1540? A. Yes, sir; I get that simply from a sort of association.

Q. But that is your belief, your best opinion? A. Yes.

Q. You have spoken of Webster's father, do you know what his name was—it was Harry Webster, wasn't it? A. I don't remember that.

Q. The picture about which you have already

spoken and which you say you took to the St. Regis Indians, where did you get that photograph? A. My impression is I got it from Thomas La Forte or some one before I went to Canada. 247

Q. It represents Canada Indians entirely? A. Yes, sir.

Q. The scene of the reading of wampums is in Canada? A. Yes, sir.

Q. They are Canada Onondagas on that picture? A. Yes; that's right.

Q. All the Indians in that picture are Canada Onondaga Indians? A. Yes, sir.

It is admitted that the four wampums, represented in the lower right-hand picture of the plate entitled "Historic Wampums—Six Nations," are the wampums in controversy in this action and that they were in the possession of Mr. Delehanty, attorney for the defendant herein, about two weeks ago. 248

The Exhibits "A" and "1" are made a part of this deposition, and also the photograph which is to be sent by General Carrington.

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250

SUPREME COURT,

ONONDAGA COUNTY.

In re Suit *vs.* JOHN BOYD THATCHER.

HENRY B. CARRINGTON, U. S. A.

corrects some errors of stenographer, not having had the same read to him before adjournment.

a. On bottom of Page 1 (fol. 203), it should read General in the Volunteer Army, and Colonel U. S. Army, retired. I never was Colonel of Volunteers, but Col. 18th U. S. Infy., May 14, 1861,
251 and Gen. Vols., Nov. 29, 1862.

b. Last line but one (fol. 206), strike out the word "especially," I did not say it. There were other greater changes, while Mr. Wright designed to retain of that all that he regarded as essential.

c. The last answer at the bottom of the page (fol. 236), is wrong, it involves a legal opinion which I neither entertained nor expressed. I said that no one other than Webster claimed right to the wampums held by him, and did not say that no one else had any right to own wampums. As in the case of Mr. Bryant, before alluded to, any
252 person could secure wampums where they were for sale.

d. At bottom of 17th Page (fol. 247), respecting the photograph of the reading of wampum, I stated that my impression was that I obtained it from Thomas LaForte or some one before I went to Canada, and not that I obtained it in Canada. I saw none, as stated, when in Canada.

Note.

Since return to Boston I have not thus far found the photograph which showed the list, but as the negative is so defaced by fire as to be illegible, will see Mrs Crane and forward her copy if she has it.

The foregoing are corrigenda, upon reading type- 253
written copy of evidence, which has been very accurately placed, but the corrections speak for themselves. This is the form therefore in which the matters referred to are evidence upon trial of the cause.

HENRY B. CARRINGTON,
U. S. Army,
Late Specl Agt to Six Nations.

Dated at Hyde Park, near Boston, Dec. 5th, 1898.

HYDE PARK, Mass. January 2nd, 1899.

EDWARD WINSLOW PAIGE, Esqr. 254
44 Cedar St. New York.

DEAR SIR.

I have just returned from New Haven, Conn. where I attended American Histy Socy. Annl. Meeting, as one of the Life Members.

It is impossible to answer your questions exactly, & see no occasion for them. I went from Onondaga to the St Regis—came to Hyde Park for a visit; went to the Cherokees, in N. C.; then to the Flathead's in Montana; returned to Hyde Park, put the wampums in shape.

The subsequent summer when Dr. Crane and 255
wife, returned from Europe, met him at Saratoga where I attended a National Teachers Association, and while there, upon stating the condition of my new book, Dr. and Mrs. Crane proposed that they buy the wampums, in that behalf.

They returned to Boston, living there, 10 Concord Square until his death, except winters when he was at their Florida cottage.

The proposed Octavo edition of Six Nations has not been published yet; only that which the Government printed.

In re the wampums, I gave Dr. Crane an order for them, & he took them from my house to the

256 Art Museum, I think, after a short delay, or may have placed them there, first. They were considered his gift to his wife, at the time of the purchase. Circumstances prevented their retention, and the details of his negotionals were only incidentally brought to my knowledge, as my opinion was sought as to their value.

Yours very truly,

HENRY B. CARRINGTON.

If you want the Washington, with my autograph, I will be at the expense of the postage. Senators Hawley, Allison and others have done
257 so.—C.

HYDE PARK, MASSACHUSETTS.

16 March, 1899.

I reported to the Interior Department 25 August 1890 as reaching Akron for consultation with the U. S. Agent for New York. After Alleghany, Cattaraugus, Tonawanda and Tuscorora, I was at Syracuse. I went to Onondaga Castle late in January 1891 and left for Hogansburg (St. Regis) about 12th March 1891. I left Hogansburg, via Montreal, for Hyde Park about the 10th of
258 April, 1891, where I completed my maps and then went to the Cherokees of North Carolina, thence to Montana to move the Flathead tribe. I have since lived in Hyde Park. The time I was in Saratoga was in July 1892. I was there for a week attending the Convention of the National Teacher's Association. There I met Dr. Crane and dined with him. I returned to Hyde Park and sent the wampums to Dr. Crane in Boston.

Mrs. Crane married Dr. Crane in 1891. They went immediately to Europe returning in the Spring of 1892. They went to Saratoga in July 1892 where I met them as I have said and then they returned to Boston where they lived at num-

ber 12 Concord Square. The next winter they spent 259
in Florida from which place Dr. Crane wrote that Mr. Sanborn first visited him in Boston and then wrote me as to what he should ask for the wampums? Afterwards Dr. Crane returned to Boston and lived at number 12 Concord Square until his decease.

HENRY B. CARRINGTON,
U. S. A.
Late Special Census & Indian Agent.

JOHN A. DELEHANTY,
Attorney & Counsellor-at-Law,
Commercial Bank Building,
Albany, N. Y.

February 17, 1899.

Hon. EDWARD WINSLOW PAIGE, 260
Counselor at Law,
44 Cedar Street,
New York.

MY DEAR MR. PAIGE:—

Your letter of Thursday has been received by me.

Mr. Thacher has informed me that he went to Europe during the month of December, 1894, and remained away from Albany during a period of three months at that time. He again went to Europe during the month of February, 1898, and remained away from Albany during a period of 261
three months. These are the only two occasions that he has been outside the United States since the first of March, 1893. During the continuance of the World's Fair at Chicago, between the months of May and November, 1893, he made frequent trips between Albany and Chicago; but with that exception and occasional business trips to Washington during the winter of 1893-1894 covering a period of two or three days at a time, and except of course while he was in Europe, he has not been outside the state of New York since March, 1893.

Very truly yours,
JOHN A. DELEHANTY.

262 SUPREME COURT.

THE ONONDAGA NATION and others

against

JOHN BOYD THACHER.

We stipulate that the foregoing deposition of Henry B. Carrington, being pages 1 to 22 inclusive
263 of type-writing; and the three foregoing letters of Henry B. Carrington dated respectively, 5 December, 1898, 2 January, 1899 and 16 March, 1899, are evidence in this case and in any other action brought to recover the same wampums that are in controversy in this action and the foregoing letter of John A. Delehanty dated 17 February, 1899, is evidence in this action.

EDWARD WINSLOW PAIGE,
Plaintiffs' Attorney.

JOHN A. DELEHANTY,
264 Defendant's Attorney.

Extracts from Special Bulletin (Ex. A and 1.)

[Title]

"ELEVENTH CENSUS OF THE UNITED STATES.
"ROBERT P. PORTER,
"Superintendent.

"EXTRA CENSUS BULLETIN.

"INDIANS.

"The Six Nations of New York.

"Cayugas, Mohawks, Saint Regis, Oneidas, Onon-
"dagas, Senecas, Tuscaroras."

Exhibit A and 1 (Census Report), page 447.

"THE SIX NATIONS OF NEW YORK: The story "of the Five, afterward Six, Nations, or, more "properly, the league of the Iroquois, no matter "how or when told, never loses its interest. The "uncertainty and doubt surrounding most North "American Indian history are partially removed "from the Six Nations. They of all American "Indians have best preserved their traditions. "Besides, their system was so complete and their "goverment so unique and so well fitted to the "people that from the earliest European arrival "they have been constantly written about. Their "small numbers, compared with the enormous "country they occupied and the government they "originated, with their deeds of daring, will always "excite surprise. Their league, tribal and indi-"vidual characteristics, and personal strength of "will, together with their great courage and "prowess, account for their success in war and "the methods which brought comfort in peace.

"The Six Nations are to American Indian life "what the Greeks and Romans in ancient history "were to the nations bordering on the Mediter-

"ranean. Their generalship in war was of the
"highest, their civilization and cultivation, for
"their surroundings, the most advanced, and their
"economies of life the most applicable and fit of
"all the American race within the present bound-
"aries of the United States and Canada.

"They made war or peace with equal facility,
"holding with a death-grasp to their old ideas and
"traditions, conquering and absorbing tribes, and
"getting the control and government of the coun-
"try from the now Carolinas on the south to the
"lakes on the north and the Mississippi on the
"west. The Mohawk war-whoop was the terror
"of aboriginal life, and the signal-fires of the
"Iroquois league, illuminating the hills and val-
"leys of the Atlantic coast, meant danger to the
"outlying tribes.

"Their phenomenal fighting capacity, coupled
"with the rapidity of movement and power of
"concentration of their fighting men, gave the im-
"pression of a vast number of warriors. It can be
"stated with almost a certainty that the league of
"the Iroquois since the advent of the European on
"the American continent and up to 1880 never
"exceeded 15,000 persons, and it never had an
"available fighting force of more than 2,500 men;
"and the astonishing fact is presented by the
"census of 1890 and the statistics of non-resident
"Iroquois tribes that the league of the Iroquois is
"stronger in 1890 than it was in 1660, when first
"estimated by competent Europeans. In 1660 it
"was estimated at 11,000; in 1890 it is 15,870.

"Reports of late years as to the condition of the
"Six Nations of New York have been contradic-
"tory, and many of them were evidently manu-
"factured and given out by interested parties when
"legislation to affect these Indians was pending.
"Considering the fact that no correct census em-

"bracing their actual condition had ever been made 271
"up to 1890, great care was taken in laying out the
"details of the work for a census and in selecting
"the agent to execute it."

Page 2 of Ex. 1 and A.; page 448 of C. R.:

"The struggle now within the Six Nations for
"control of their government lies between the
"pagan and christian elements, and, in addition,
"they have to war with the wiles of the white
"man. Official corruption has been noted in the
"past among those high in authority, but this is
"now being rapidly remedied. The Six Nations
"are in most danger from without. The pagans, 272
"as used here (meaning the old party), are those
"holding to the faith of their fathers and opposing
"the white man and his methods. The christian
"element means those who accept christianity as a
"doctrine. As far as personal morals and the
"daily life of most of these people are concerned,
"the difference is merely technical, and consists in
"definition, the word of a pagan being considered
"as good as that of a christian, and, in the view
"that the state has nothing to do with one's pro-
"fession of creed, among the Indians a self-reliant
"pagan is preferable to a dependent christian. In
"the league of the Iroquois the largest liberty of 273
"the person consistent with the safety of the
"league is permitted. From personal independence
"and sense of manhood many of the Iroquois have
"never departed. The reservation Indians of the
"west are the reverse of this. They look upon the
"nation and the great father as providers and dis-
"pensers of food and clothing, and lean heavily
"upon them and the public treasury. The Six
"Nations of New York have generally asked the
"great father, the Congress, and the New York
"legislature to let them severally alone. They
"have been in a measure let alone by the author-

274 " ities, and the result is that they are self-sustain-
" ing and much further advanced in civilization
" than any other reservation Indians in the United
" States, and as much so as an average number of
" white people in many localities. They have
" borne the burdens of peace with equanimity, and
" met the demands of the war for the Union with
" patriotism and vigor. Envious Caucasians, hun-
" gering for the Indians' landed possessions in
" New York state, as elsewhere, have been active
" and earnest in efforts to absorb their sustenance.
" They have been kept from doing so thus far
" through the efforts of earnest and active fair-
275 " minded people, who have prevented their spolia-
" tion. The Six Nations have been charged with
" being pagans, heathens, and bad citizens gener-
" ally, but investigation shows the latter charge to
" be false."

Page 3 of Ex. 1 & A.; page 449 of C. R.:

" The law and facts show that the reservations of
" the Six Nations of New York are each indepen-
" dent, and in some particulars as much sovereign-
" ties, by treaty and obligation, as are the several
" States of the United States. The Saint Regis res-
" ervation, however, differs somewhat from the oth-
276 " ers. The lands within these reservations, of course,
" partake of and carry with them the conditions
" of the grant. These nations are anomalies, and,
" with the exception of the Five Civilized Tribes
" in Indian territory, who are each known by
" treaty as nations, are the only ones of like char-
" acter in the United States. They are in fact
" almost nations within a nation. They were crea-
" ted and grew more out of fear of the Indian, and
" the desire to get rid of and keep him at peace at
" any price, than as an act of justice. In Indian
" territory they are embarrassing to the National
" Government, and an eysore to the people who

"desire to live there. In New York they are a 277
"wonder to the curious, and the expectant haven
"of hope to many speculators.

"The end of the century will probably see the
"so-called nations in Indian territory absorbed or
"dispersed, and a marked change in the present
"Indian nations in New York.

"The incidents of the enumeration of the Seneca
"nation showed a strong desire on the part of the
"advanced portion to break away from old-time
"ideas and to keep abreast with their white neigh-
"bors. The entire reorganization of the Iroquois
"Agricultural Society was a step forward. A more 278
"important indication in the same direction was
"that of the Spring election in May, 1891, when
"nearly every person elected was able to speak
"and read the English language, and embraced
"among their number men of property and pro-
"gressive tendencies.

"The members of the Six Nations of New York
"residing on reserations or living in tribal rela-
"tions, do not vote at county or state elections,
"nor do they pay taxes to the counties or the
"state. They are, therefore, Indians not taxed.
"They have a constitution, and the Senecas have
"a charter from New York as well as their own. 279
"They are amenable to national and state courts
"or laws only in respect of crimes, except the
"Saint Regis Indians, hereinafter noted.

"If the Iroquois, native or foreign-born, want
"to become citizens of the United States, they
"must renounce allegiance to their own people;
"but if those of the Six Nations in New York
"become such citizens they cannot carry their real
"property interest with them so that it will be
"subject to levy and sale for debt on contracts.
"This, in fact, is at present a practical inhibtion
"in their way to citizenship. The several reser-

280 " vations belong to them (Saint Regis differs some-
" what from the others), and neither the State of
" New York nor the United States can legally
" break them up without the Indians' consent, or
" through conditions analogous to those of war.
" They have always been recognized as nations."

Page 4 of Ex. 1 & A.; page 450 of C. R.:

" The conclusion is irresistible that the Six
" Nations are nations by treaty and law, and have
" long since been recognized as such by the United
" States and the State of New York, and an en-
" lightened public will surely hesitate before pro-
281 " ceeding to divest these people of long-established
" rights without their consent—rights recognized
" and confirmed in some cases by the immortal
" Washington and by more than a hundred years
" of precedents and legislation."

" PEACEMAKER COURTS: The peacemaker courts
" are peculiar to the Seneca Indians of New York.
" They exercise probate jurisdiction and jurisdic-
" tion over minor offenses. Appeal may be taken
" to the council of the Seneca nation proper on the
" Allegany and Cattaraugus reservations, and to
" the separate council of the Tonawanda Senecas.
282 " The term of office of a peacemaker is for three
" years, one being elected annually for each reserva-
" tion, but those of the Tonawanda band, as with
" all its officers, have no official relation to the
" other bands of Senecas.

" The president of the Seneca nation sits as judge
" upon the impeachment of a peacemaker. Among
" the grounds of impeachment is taking a bribe,
" or, by relationship or otherwise, having interest
" in a case.

" Divorces, as well as probate matters, come be-
" fore this court."

Facing page 7 of Ex. 1 and A. and page 472 of C. R.:

Page 19 of Ex. 1 & A.; page 461 of C. R.: 283

"HISTORICAL OUTLINE."

"The retirement of the Indian westward within "the United States has been qualified by two his- "torical factors. The first grew out of the un- "limited and conflicting sweep of British land "grants, which involved subsequent conflicts of "jurisdiction and corresponding compromises, "the second was incidental to the passage of the "ordinance of July 13, 1787, which organized the "northwest territory. The first, especially in the "adjustment of the claims of Massachusetts and 284
"New York, to the same lands, dealt with Indian "titles and rights which neither party could wholly "ignore. The white men had overlapped and "practically surrounded certain internal nations. "The United States followed the British prece- "dent, recognizing the independent sovereignty of "the Five Nations (*a*) in New York, and the rival "states of Massachusetts and New York made their "adjustments upon the same general basis.

"Unlike their less fortunate countrymen in the "southern states, the Five Nations inherited titles, "which they fully maintained in spite of French "invasion, compelling Great Britain to honor 285
"those titles in her settlement of issues with "France. The French claim of discovery was not "supplemented by one of conquest. The Iroquois "confederacy successfully defended its ancestral "homes against both Indian and civilized invad- "ers, even before Plymouth and Yorktown were "colonized or Hollanders occupied Manhattan Is- "land. At the establishment of the American re- "public the Five Nations were still too strong to

"(*a*) The Five Nations, or League of the Iroquois, became the Six "Nations after 1713 by the admission of the Tuscarora Indians "from North Carolina into the Union's confederacy."

286 "be ruthlessly forced out of their surroundings,
"and the sentiment of the American people, sup-
"ported by President Washington, completely
"suppressed any demonstration in that direction.
"The campaign of General Sullivan was based upon
"hostile invasion by the Indians, and its settle-
"ment was treated as the end of a necessary war
"with contiguous states.

"The ordinance of July 13, 1787, dealt with
"the Indian upon the border, whose hunting range
"had no limit, and whose home jurisdiction had
"no distinctive definition.

"The distinction between the early status of the
287 "New York tribes and that of the western tribes
"is an important one in applying the facts obtained
"for the Eleventh Census of the United States to
"the solution of the problem in future dealings
"with the Six Nations.

"The Indians of New York, early recognized as
"an independent body politic, too strong to be
"despised and to be conciliated as allies against
"other enemies, have been comparatively undis-
"turbed by modern progress, but which must in-
"evitably resolve all purely tribal relations into
"common citizenship. The pressure from without
288 "has, in the main, been that of example and ideas
"rather than that of force. The reduction of their
"landed possessions and the modification of their
"governmental forms and social usages have been
"matters of negotiation, treaty, and friendly ad-
"justment. The grant by King James I of Eng-
"land to the Plymouth colony, afterward known
"as Massachusetts, from the Indian tribe of that
"name, and the grant of Charles II to the Duke
"of York covered in part the same lands, involv-
"ing questions similar to those which attend Vir-
"ginia land grants, and all others which extended
"westward to the Pacific ocean at a time when the

"geographical status of lands 'westward' had no "clear description."

"A brief reference to the substantial settlement "of this and other matters affecting the New York "tribes is all that is needed in this connection. "The numerous national treaties and acts of Con- "gress and other treaties between the State of "New York and the Six Nations, which are mat- "ters of public record, have been compiled and "published by the State of New York in a volume "entitled 'Report of special committee, appointed "by the assembly of 1888 to investigate the Indian "problem of the State.' The documents occupy "320 pages, octavo size. Additional printed mat- "ter of 804 pages embodies the testimony taken "by a special commission in prosecuting their in- "quiries, and an appendix to the volume cites "statutes and treaties which have historic rela- "tion to the subject-matter."

Page 20 of Ex. 1 and A; page 462 of C. R.:

"The tendency of attempted legislation and "very pronounced utterances from respectable "sources have been in the direction of an abroga- "tion of all existing treaties, with or without the "consent of the Indians. All such propositions "will be confronted by a national judicial nega- "tive, and no impatience with slow Indian de- "velopment can excuse the impairment of his "substantial titles and rights or the imposition of "terms of conquest."

"ANTECEDENTS OF THE SIX NATIONS: It is "impossible to justly apply the tests of to-day "without deference to the antecedents of this "people and that course of history which has per- "petuated their independence while nearly all "their contemporary tribes have diminished or "disappeared. The advent of the white man in

292 " the colonization of the Atlantic coast was at a
" time when the Iroquois confederacy of the Mo-
" hawk, Oneida, Onondaga, Cayuga, and Seneca
" nations had practically mastered the Algonquin
" tribes, which in Canada, New England, the
" middle colonies, and the west had long girdled
" the New York tribes as a belt of fire. Unlike
" the Algonquins, whose tribes had nothing to
" bind them together but certain similar peculiar-
" ities of dialect and jealousy of the Five Nations,
" the Iroquois (the Mohawks, Oneidas, Onondagas,
" Cayugas, and Senecas) had a constitutional bond
" of union, described by Lossing as a 'barbaric re-
293 " public, the Iroquois confederacy, existing in the
" wilderness, simple, pure, and powerful, with its
" capital 100 miles from the sea, and unknown
" until Cartier sailed up the Saint Lawrence, until
" Champlain penetrated its forests, and Hudson
" discovered the beautiful river that bears his
" name.'

" The traditions of the formation of this league
" are very old, systematic, and carefully preserved.
" The league was called Ko-ni-shi-o-ni, the 'cabin
" builders' or the 'long house,' of which the
" Mohawks held the eastern and the Senecas the
294 " western door, with the great council fire or fed-
" eral capital among the Onondagas. The words
" attributed to Hiawatha, 'the very wise man,'
" mingled with much romantic story, are so de-
" scriptive of the family peculiarities of the differ-
" ent nations that they are worthy of notice in the
" briefest of the two forms preserved among the
" people. The scene of the conference was on the
" hill slope north of Onondaga lake, in the State
" of New York."

"The Words of Hiawatha.

" We have met, members of many nations, many
" of you a great distance from home, to provide for

" our common safety. To oppose these foes from 295
" the north by tribes, and alone, would prove our
" destruction. We must unite as a common band
" of brothers, and we shall be safe.

" You Mohawks, sitting under the shadow of the
" great trees, whose roots sink deep into the earth,
" and whose branches spread over a vast country,
" shall be the first nation, because you are warlike
" and mighty.

" You Oneidas, a people who recline your bodies
" against the everlasting stone that cannot be
" moved, shall be the second nation, because you
" give good counsel.

" You Onondagas, who have your habitation at 296
" the great mountain and are overshadowed by its
" crags, shall be the third nation, because you are
" greatly gifted in speech and are mighty in war.

" And you Cayugas, whose habitation is in the
" dark forest and whose home is everywhere, shall
" be the fourth nation, because of your superior
" cunning in hunting.

" And you Senecas, a people who live in the
" open country and possess much wisdom, shall
" be the fifth nation, because you understand the
" art of raising corn and beans and making
" cabins. 297

" You five great and powerful nations must
" unite and have but one common interest, and
" no foe shall be able to subdue us. If we unite,
" the 'Great Spirit' will smile upon us. Brothers,
" these are the words of Hiawatha. Let them
" sink deep into your hearts.

" In 1535, at the site of the future city of
" Montreal, Cartier made a vocabulary of Indian
" words, showing that the Iroquois language was
" then spoken by the Hurons, who were con-
" quered or absorbed by the Iroquois. The con-
" federacy is held to have had its origin about

298 "this time. This league, purely aristocratic in
"spirit, but republican and representative in form,
"was not political, but chiefly for mutual de-
"fense. The carefully preserved wampums of those
"early times will receive notice in another con-
"nection. 'Each nation was distinct and inde-
"'pendent as to domestic affairs,' writes Lossing,
"'but bound to the others by ties of honor and
"'the general good.' Each had its principal
"sachems or civil magistrates with subordinate
"officers, in all 200, besides 50 with hereditary
"rights. These were assigned as follows: To the
299 "Mohawks, 9; to the Oneidas, 10; to the Onon-
"dagas, 14; to the Cayugas, 10, and to the Sene-
"cas, 8. Each nation had subdivisions of tribes
"or clans, such as Wolf, Bear, Turtle, Snipe,
"Beaver, Deer, Hawk and Heron, 8 in all. The
"insignia or totem (mark) of each was subsequently
"placed upon treaties after the European style.
"These tribes or clans formed one of the closest
"bonds of union among the confederated nations.
"In effect, each tribe was divided into 5 parts,
"and 1 part was located in each nation. The
"Mohawk Wolf regarded the Seneca Wolf as his
"brother. Thus, if the nations fell into collision
300 "it would have turned Bear against Bear, Wolf
"against Wolf, brother against brother. 'The
"'history of the Ho-de-no-sau-nee,' says Morgan,
"'exhibits the wisdom of these organic pro-
"'visions, for during the whole history of the
"'league they never fell into anarchy nor verged
"'upon dissolution from internal disorders. The
"'whole race was woven into one great family
"'family of related household.' The 8 tribes
"were, however, in 2 divisions of 4 each, the
"Wolf, Bear, Beaver and Turtle forming one di-
"vision, and the Deer, Snipe, Heron and Hawk
"forming the other. Marriage between members

"of the same division was nearly as rigidly for- 301
"bidden as between members of the same tribe."

Page 21 of Ex. A & 1.; page 463 of C. R.:

"The league had a president with 6 advisers,
"and authority to convene representatives of all
"tribes in cases requiring concert of action. Merit
"was made the basis and sole reward of office.
"Oh-to-da-ha, an aged Onondagan, was the first
"president of the league. The mat upon which
"he sat is still preserved with care, and the buck-
"skin threads upon which the shell and stone
"beads were strung are still sound, presenting one
"of the most beautiful relics of the history of the 302
"confederacy.

"In the military department chiefs were elected
"for special causes, nor did they hesitate in
"extreme cases to depose the civil sachem to give
"greater force to battle action. The military ser-
"vice was not conscriptive, but voluntary, although
"every man was subject to military duty, and to
"shirk it brought disgrace.

"Most extraordinary of all, the matrons sat in
"council with a substantial veto as to peace or
"war. 'With these barbarians,' says the historian
"of New York, 'woman was man's co-worker in 303
"'legislation, a thing yet unknown among civil-
"'ized people.' Doctor Colden, in his history of
"the five Nations, sagely suggests that 'here we
"'may with more certainty see the original forms
"'of government than in the most curious specu-
"'lations of the learned.' Such was their regard
"for the rights of man that they would not
"enslave captives; neither did they allow inter-
"marriages among families of the same clan.
"This has been the prevailing law up to the
"present time."

304 Page 24 of Ex. 1 and A.; page 465 of C. R.:

"THE GOVERNOR TRYON MAP: The latter has "historic value from its description of the country "of the Six Nations, with part of the adjacent "colonies, recognizing at the time the independent "relations which they sustained to Great Britain. "The vast tract then controlled by the Seneca "Indians is clearly defined, and the changes of "120 years appear more impressive when the "boundaries and condition of the present repre- "sentatives of the former Six Nations are brought "into close relation to the facts of to-day.

305 "AREAS OF THE SIX NATIONS RESERVATIONS "IN NEW YORK AND CORNPLANTER SENECA, IN "PENNSYLVANIA.

	Acres.
"Onondaga	6,100.00
"Tonawanda	7,549.73
"Allegany	30,469.00
"Oil Spring	640.00
"Cattauragus	21,680.00
"Tuscarora	6,249.00
"Saint Regis	14,640.00
"Cornplanter, in Pennsylvania.	640.00
306 "Total	87,967.73

"The New York commission estimates the acre- "age of the Onondaga reservation at 7,300. The Saint Regis, with swamp land, is estimated at 15,280 acres.

"RESERVATION OF THE SIX NATIONS IN NEW "YORK: 1890. The maps of the existing reserva- "tions, as defined in 1890, locate each family, "water course, and road, developing, as if by "accident, in the clustering of their homes, the "differences between those of each nation who "'hold to the tradition of the father, and those

OFFICERS OF THE LEAGUE OF THE IROQUOIS IN THE UNITED STATES.

DANIEL La FORTE (Ha-You-Wa Eah), "Intestine Bruiser."
Chairman of League, and adopg To-do-da-ho. Wolf Tribe, Onondaga.

THOMAS WEBSTER (Ha-yeh-do-gih-weh), "Bitter Body."
Keeper of the wampum. Snipe Tribe, Onondaga.

JARIS PIERCE (Jah-dah-dah), "Sailing Whale."
Clerk of Six Nations. Onondaga.

" who welcome the civilization and christianity of 307
" the white man.

" For a complete and full history of the original
" treaties and authorities as to the legal status of
" the Six Nations reservations in New York (beside
" the report of the New York state commission
" herein referred to), see the report prepared by
" Alice C. Fletcher in 1885 and a monograph by
" Franklin B. Hough, of Lowville, New York, on
" the Indian tribes of New York, both printed in
" Executive Document No. 95, Forty-eighth
" Congress, second session, which are full and
" most valuable. The various New York reports 308
" and especially that of the New York commis-
" sion, made in 1889, contain much of interest as
" to the reservations of the Six Nations."

Page 25 of Ex. 1 & A; page 466 of C. R.

" ONONDAGA RESERVATION: An old wampum
" of 1608, representing the Iroquois confederacy,
" has for its " center house," to indicate the rank
" of the Onondagas, a heart. On either side are
" joined two sister nations, and, although fewer in
" numbers at present than others, the Onondagas
" are given the first place in illustration of the Six
" Nations in 1890." 309

Facing page 33 of Ex. 1 and A. and page 473 of C. R.:

310 Page 33 of Ex. 14 A., page 471 of C. R.:

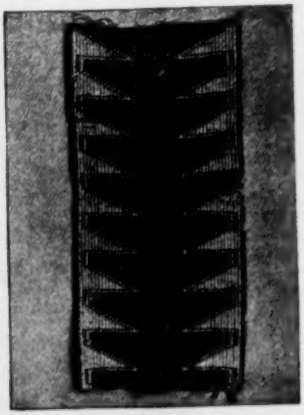
"ANCIENT AND MODERN GOVERNMENT, PROVISIONS AND INCIDENTS:

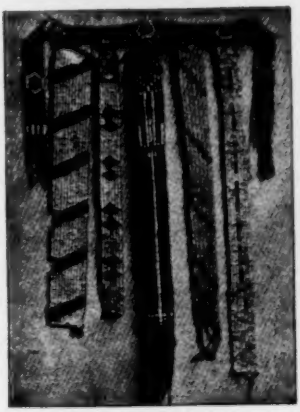
"The Iroquois league had its democratic and "republican elements, but the separate national "governments were essentially oligarchic. The only "semblance of written law was the wampum. It "was the duty of the 'keeper of the wampums' "to store all necessary facts in his memory and "associate them with the successive lines and ar-"rangements of the beads so that they could read-
311 "ily be called to mind. At general councils the "wampums were produced, solemnly expounded, "and made reminders of history and duty.

"'Reading the Wampums' became, therefore, a "means by which to perpetuate treaties, and the "exchange of wampums was an impressive occa-"sion. Both the Canadian and New York divisions "of the Six Nations retain as national heirlooms "these evidences of the chief facts in their national "life."

"The Onondagas retain the custody of the wam-"pums of the Five Nations, and the 'keeper of "'the wampums,' Thomas Webster, of the Snipe
312 "tribe, a consistent, thorough pagan, is their in-"terpreter."

"According to the Narrative of Indian Wars in "New England, the original wampum of the Iro-"quois, in which the laws of the league were "recorded, 'was made of spiral water shells, strung "'on deerskin strings or sinew and braided into "'belts or simply united into strings.' Mr. Hub-"bard describes the wampum as 'of two sorts, "'white and purple.' The white is worked out "of the inside of the great conch shell into the "form of a bead, and perforated to string on "leather. The purple is worked out of the inside

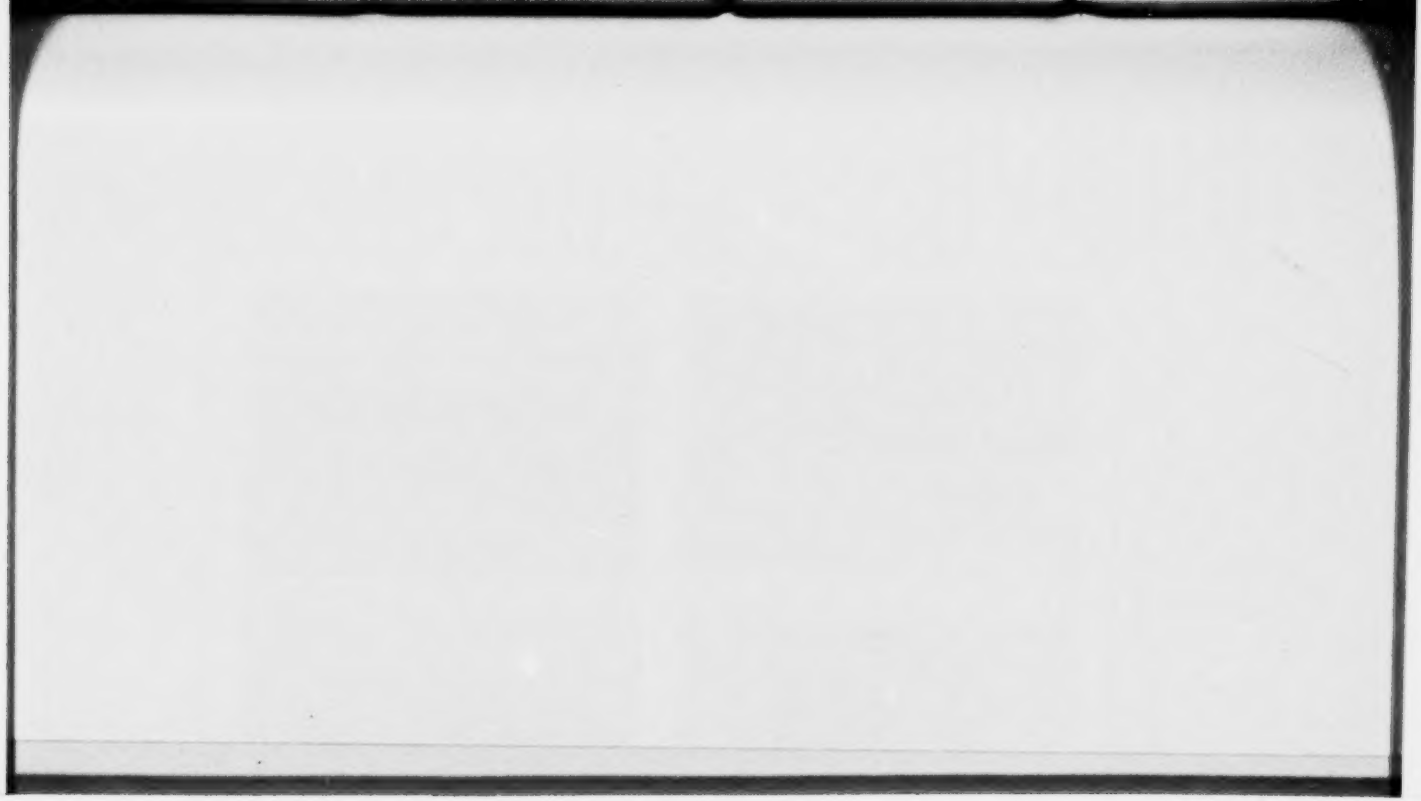




HISTORIC WAMPUMS—SIX NATIONS.

Presidentia of the Iroquois, about 1540.
Six wampums of the Six Nations.

Wing or dust fan of Presidentia of Six Nations.
Group of four wampums and turtle rattles, used in Feather Dance.



"of the mussel shell. A single wampum repre- 313
"senting the Onondagas by a heart, in the centre
"of the league, and older than the settlement by
"the white people, or, as claimed, dating back to
"Champlain's invasion in 1608, contains over 6,000
"white and purple beads made of shell or bone.
"Another of later date, 6 feet in length and 15
"strings wide, and containing 10,000 beads, repre-
"sents the first treaty between the league and the
"United States. In the centre is a building repre-
"senting the new capitol. On each side is a figure
"representing Washington and the president of
"the league, while, hand in hand, the thirteen 314
"colonies or States, on one side seven and on the
"other side six, in all fifteen figures, complete the
"memorial record. The mat on which the presi-
"dent of the league (To-do-da-ho), is supposed to
"have sat when the league was instituted, about
"the middle of the sixteenth century, and the sus-
"pended mat to keep off the dust, are still in good
"preservation. One wampum represents the con-
"clusion of peace with seven Canadian tribes who
"had been visited by the Jesuits, having a cross
"for each tribe, and with a zigzag line below, to
"indicate that their ways had been crooked but
"would ever after be as sacred as the Cross. Still 315
"another memorial of days of craft and treachery,
"while the league was too feeble to take the field
"against the Algonquin tribes represents a guarded
"gate, with a long, white path leading to the inner
"gate, where the Five Nations are grouped, with
"the Onondagas in the centre and a safe council
"house behind all. There are eleven of these his-
"toric wampums, each fraught with traditional
"story of persons and events.

"Daniel LaForte, who has been chairman or
"president of the league, and also of the Onondagas,
"and elsewhere referred to, still insists that the

316 " wampums, as expounded by Thomas Webster,
" ' are government enough for the Nation, and lay
" ' down all the rules of duty that are needed.'
" The fact that the people can have no key to
" their own laws, and that the *dictum* of the wam-
" pum reader is binding, just as his memory or
" interpretation of the emblem shall dictate, seems
" to weigh little with the pagan party. Notwith-
" standing the claims made that the wampums can
" be read as a governing code of law, it is evident
" that they are simply monumental reminders of
" preserved traditions, without any literal details
317 " whatever. As curious relics they are valuable.
" Photographs of all the wampums were obtained
" to accompany the report of the Six Nations In-
" dians, with the explanation of each as read by
" the wampum keeper." The mat of the to-do-da-ho
" and the wing (mat) used by the headman to
" shield him from the dust while presiding at the
" council are well preserved. The first group,
" from left to right, represents a convention of the
" Six Nations at the adoption of the Tuscaroras
" into the league; the second, the Five Nations,
" upon 7 strands, illustrates a treaty with 7
" Canadian tribes before the year 1600; the third
318 " signifies the guarded approach of strangers to
" council of the Five Nations; the fourth repre-
" sents a treaty when but 4 of the Six Nations
" were represented; and the fifth embodies the
" pledge of 7 Canadian ' Christianized ' nations to
" abandon their crooked ways and keep an honest
" peace. Above this group is another, claiming to
" bear date about 1608, when Champlain joined
" the Algonquins against the Iroquois. The
" second group includes, also in the center, the
" official memorial of the organization of the
" Iroquois confederacy, relating back to about the
" middle of the sixteenth century, and imme-

"diately over that of 1608, suspended between 319
"the 'turtle rattles,' which were used at the
"feather dance at Cattaraugus January 21, 1891,
"is a ragged wampum of unknown antiquity.
"Above, and containing the general group, is the
"wampum memorial of the first treaty made by
"Washington on behalf of the 13 original States
"and the president of the Six Nations at the
"national capital."

"GOVERNMENT AND EXISTING CONDITION OF THE
"RESERVATIONS:

"To give a clear view of the government and
"present condition of the reservations, they will 320
"be noticed in the order already adopted.

"The Onondaga Nation is governed by 27 chiefs,
"all but 2 being of the pagan party; 2, however,
"are sons of christian ministers, and others pro-
"fessed for a time to be christians, but quietly
"rejoined old associations. Albert Cusick, lay
"reader in the Church of the Good Shepherd,
"held the office of to-do-da-ho (president) at one
"time, but was deposed on account of his religion.
"Those who have thus resumed their former poli-
"tical and social relations are among the most
"persistent in opposing a change. Daniel La
"Forte, a genial man in his own house, and once 321
"active in church work, is one of this number. It
"is, nevertheless, true that many of the most in-
"fluential, whose property is gaining in value,
"and whose business gradually increases their
"dependence upon the white people for a market
"and like benefits, realize that their own interests
"would be more secure under some recognized
"code of law for the government of the nation.

"The ruling chiefs, chosen by the females of the
"families represented, as in very ancient times,
"are practically in office for life. In case of a
"vacancy the successor chosen may be under age."

322 Page 36 of Ex. 1 and A; not in C. R.:

"It would be almost impossible for any com-
"munity of white persons, whether of a high
"or low social grade, whether educated or
"ignorant, to live in peace under the loose re-
"straints which the Six Nations call their govern-
"mental system, and yet there are very few dis-
"orders, few crimes, and petty offenses against
"person or property are very infrequent. Pride
"in the old systems of the confederacy and in the
"traditions and memories of early times have much
"to do with the involuntary respect paid to the
323 "chiefs, sachems or councillors, who are officially
"recognized as their government by the respective
"nations; but natural indolence or indifference to
"the future, provided the immediate present be
"tolerable, has its effect, and suspicion that the
"white people urge citizenship upon them for the
"purpose af a more ready control of their lands
"prevents decided action toward citizenship."

Page 37 of Ex. 1 & A; page 473 of C. R.:

"The names of the present chiefs are as follows,
"those marked with a x being unable to read or
"write: x Thomas Webster (Snipe) age 64; x
324 "John Green (Wolf) 74; x Asa Wheelbarrow (Eel)
"64; Charles Green 30; x William Hill, 52; John
"Hill, 56; x Peter George (Eel) 38; John R.
"Farmer, 28; x James Thomas, 42; George Van-
"every (Snipe) 36; x Frank Logan (Wolf), 35;
"William Lyon (Turtle), 50; x Billings Webster,
"31; Daniel LaForte (Wolf) 58; x George Crow
"(Wolf) 34; x Baptist Thomas (Turtle), 64; x
"Abbott Jones, 76; x Charles Lyon, 57; x An-
"drew Gibson (Beaver), 29; x Wilson Reuben
"(Beaver) 50; Jacob Scanandoah, (Beaver) 70; x
"George Lyon (Eel), 42; x Levi Webster, 35;
"Hewlett Jacobs (Eel) 48; Jacob Bigbear (Turtle);

"John Thomas (Turtle), 30; Enoch Scanandoah, 325
"24."

Page 39 of Ex. 1 & A; page 474 of C. R.:

"The Tuscarora Indians were admitted to the "Iroquois league on the ground of a common "generic origin, retaining their own hereditary "chiefs, but without enlarging the original frame- "work of the confederacy. They had authority "to be represented and enjoy a nominal equality "in the councils. They are styled 'sons,' and in "turn use the term 'fathers' in their official rela- "tions with the league. No authority exists by "which they can be disturbed by the league in the 326
"management of their own affairs. The prevalent "opinion to the contrary is an error. In the Rev- "olutionary war and in the war of 1812 they were "faithful to the white people, and in the war of "the rebellion furnished a reasonable contingent "of volunteers to the union cause.

"Vacancies among the chiefs are filled by the "women of the clans entitled to the appointment. "Here, as among the Onondaga and Tonawanda "bands, the ruling chiefs arrogate and occasionally "exercise the power of displacing chiefs by formal "deposition, or make the place so uncomfortable 327
"as to force a resignation. It is a stretch of pre- "rogative to exercise this power except for a cause "that would require a substantial impeachment, "but there is no method of redress, and the Indian "dislike to bother about local legislation, even in "their own behalf, represses organized effort to "find a remedy."

Page 39 of Ex. 1 & A.; page 475 of C. R.:

"The Saint Regis Indians formed part of the Seven "Nations of Canada. In 1852 their numbers were "1,100, or nearly the present number of the Ameri- "can Saint Regis Indians. By a provision of the

328 "first constitution of New York, adopted April
"26, 1777, no purchases or contracts for the sale
"of lands by the Indians since the 14th day of
"October, 1775, were to be valid unless made with
"the consent of the legislature. Among the docu-
"ments in the possession of the nation at the pres-
"ent time none are more prized than the treaty
"made May 4, 1797, exemplified, signed and sealed
"by John Jay, Governor, February 28, 1800."

Page 40, Ex. 1 & A.; page 475 of C. R.:

"The peculiar credit which the Six Nations at-
329 "tach to all preserved treaties, however old or
"superseded, developed during the census year a
"new departure in the Saint Regis plan of self-
"government. The old or pagan element among
"the Onondagas, supported by Chief Daniel La-
"Forte, Thomas Williams, keeper of the wampum,
"and others, maintained that their rights to lands
"in Kansas and similar rights rested upon treaties
"made between the Six Nations (exactly six) and
"the United States, and at a general council, held
"in 1888, the Saint Regis Indians were formally
"recognized as the successors of the Mohawks,
"thus restoring the original five, while, with the
330 "Tuscaroras, maintaining six. The theory was
"that an apparent lapse from the six in number
"would in some way work to their prejudice. The
"same element at once proposed the revival of the
"old government by chiefs, which had become ob-
"solete among the Saint Regis Indians. A meet-
"ing was held, even among the Cattaraugus
"Senecas, with the deliberate purpose to ignore or
"abandon their civilized, legal organization as the
"Seneca nation and return to former systems. The
"impracticability of such a retrogade movement
"did not silence the advocates for chiefship for the
"Saint Regis Indians. The election through

"families, after the old method, of 9 chiefs and 9 331
"alternate or vice chiefs was held, and these were
"duly installed in office by a general council,
"representing all the other nations. Practically
"and legally they have no power whatever."

Page 61 of Ex. 1 & A.; not in C. R.:

"Wampum associations must be exchanged for
"written law, and irresponsible chiefs must be
"held to strict account under intelligent codes,
"voluntarily adopted, under the sanction of the
"State, or by the interposition of the State in be-
"half of the people, who have no power to protect
"themselves." 332

Page 78 of Ex. 1 & A.; page 496, C. R.:

"The very names contrasted with those of other
"reservations, Webster, Hill, Thomas, Brown,
"Jones, Jacobs, and Lyons being English. Old
"John Adams, of the war of 1812, Abraham Hill,
"the honored Oneida chief, and Chief Theodore
"(Thomas) Webster, keeper of the wampum, bore
"their years with dignity, and were among the
"most interested of those present."

Page 79 of Ex. 1 & A.; not in C. R.:

"The alleged absurdity of the Six Nations of 333
"New York being a (nation within a nation) does
"not change the fact or nullify the sequence of
"actual history. This very fact opens to the In-
"dian and to the white man a way of relief, with-
"out the impairment of treaties or the disregard
"of any rights whatever.

'Accepting all that the most technical advocate
"of the Indians' claim to prolonged independence
"can advance, a higher and equally consistent
"principle of international law supplies the whole-
"some remedy.

"As contiguous nations must have political

334 " intercourse, and upon a basis of mutual benefit,
" so there must be, on the part of each, some
" representative authority to adjust conflicting
" issues between them. The absence of such au-
" thority, and the neglect or refusal of any people to
" place themselves within the range of mutual con-
" sideration of the rights of the citizens of both, is
" among all nations a *casus belli*. The remedy
" may not require arms, but a constraint equiva-
" lent to that of arms when actual rupture occurs
" is legitimate."

Page 80 of Ex. 1 & A., not in C. R.:

335 " THE TITLES TO INDIAN LANDS: Independent
" of the pre-emption lien of the Ogden Land Com-
" pany upon the lands of the Seneca nation, and
" absolutely as respects the Onondaga, Tonawanda,
" and Tuscarora Senecas, the Indians already hold
" their lands substantially in severalty. The
" theory advanced by many that these lands are
" so absolutely held in common that the people
" have no stimulus to improve them is founded
" upon an erroneous idea of law and fact. The
" same principle that underlies the English and
" therefore the American common law obtains
" here. It has been settled among the Six Na-
336 " tions beyond question that occupation, building
" upon, and improvement of land by consent of the
" authorities representing the whole people confer
" a title, practically in fee simple, excepting that
" it is inalienable to a foreigner; but it may be
" conveyed or devised within the nation, and that
" it is inheritable by the immediate and natural
" heirs in absence of a will, and that as a system,
" however crude in form, the distribution of land
" in case of death almost invariably follows its
" natural and just direction. The exceptions are
" not greater than in contests among the white
" people.

"It is equally true that when a party without 337
"land applies to the authorities for the formal al-
"lotment of land for improvement and cultivation
"permission to so select and improve land is
"almost always given. The national title has
"itself been a guarantee to each individual occu-
"pant that this perfect title in the nation is his
"to control as if he held a deed therefor, and that
"his use and disposal of said land cannot be dis-
"turbed. It is also true that there is public do-
"main enough on each reservation to give every
"family seeking it all the land needed, and that
"the disinclination to work, to improve land, and 338
"secure support therefrom is the only barrier to a
"rightful possession and use of said land. It is
"also a fact that this tenure is so fully recognized
"that no body of chiefs or ruling representatives
"of the Six Nations dare assert any right to dis-
"turb that tenure or prevent its sale or devise by
"the tenant, and that every case, so far as known,
"reported as a violation of this right by the peace-
"maker courts or by other authority upon the set-
"tlement of an estate or dispute as to adjoining
"boundaries or conflicting titles, has been ad-
"justed upon evidence, and not upon any assump-
"tion that the title was disposable at the choice 339
"of said court or chiefs. The judges and chiefs
"on each reservation unequivocally disclaim such
"alleged authority, and any assertion of the right
"would be ignored or resisted. Neither is there
"any existing usage, method, or power by which
"an assumption of authority so sweeping could be
"enforced."

Page 81 of Exhibit 1 and A, not in C. R.:

"THE NATURAL DISTRIBUTION.—The claim by
"some that the lands of the Six Nations shall be
"divided per capita or per stirpes, in severalty, is
"a form of communism, ignoring all the just

340 "equivalent of honest industry and asserting a
"prerogative of authority over the property and
"fruitful labor that no government in contact with
"the civilized world at present would dare assert,
"much less attempt, to exercise.

"There is not the faintest similarity between
"Indian occupation of any western reservation and
"the titles of the Six Nations to their lands. The
"United States and the State of New York, with-
"out anticipating the paramount authority of the
"federal courts, have the physical power to ignore
"treaties and contracts for which an adequate con-
"sideration has been paid; but nothing less than
341 "a casus belli, when all treaties end with conflict
"and might, establishes its false code of right in
"a new adjustment of relations between the
"parties, can furnish an excuse for such legisla-
"tion."

JOHN W. SANBORN, sworn for defendant:

Examined by Mr. Delehanty:

Q. Where do you reside? A. I reside in Frank-linville, this State.

342 Q. What is your vocation? A. I am a minister of the Methodist Episcopal denomination.

Q. How long have you been a minister of that church, or any church? A. Twenty-five years.

Q. Have you ever during your career as minister been assigned to any church attended by any of the descendants of the tribes of Indians known as the Six Nations? A. Yes, sir.

Q. When? A. In 1877.

Q. Where was the church located? A. The church, composed of white people, was located at Cowanda, in Cattaraugus County. In connection with that was the Seneca Indian Nation, to which

I was appointed by the then presiding bishop of 343
the Methodist Episcopal Church.

Q. How long did you remain there? A. The full term allowed by that denomination, three years.

Q. At that time did you become acquainted with the Seneca Indians? A. Yes, sir; somewhat.

Q. Did you study their language? A. I commenced to learn the language the first day I appeared among them.

Q. Did you familiarize yourself with the Seneca language, to speak it and write it, translate it into English? A. Yes, sir; fairly well.

Q. You composed a book of hymns, translated 344
from English into Seneca ~~hymns~~? A. Yes, sir.

Q. Were you, during your stay there, adopted among the Seneca Indians? A. Yes, sir.

Q. As a Seneca Indian? A. Yes, sir.

Q. Have you had anything to do with the Indians since that time? A. Yes, sir.

Q. Have you visited any of the other tribes of Indians? A. Yes, sir, I have.

Q. How many of them? A. All of them in the State of New York.

Q. Are you the John W. Sanborn referred to in the complaint in this case who was director of the Indian Exhibit at Chicago during the World's Fair 345
Exposition? A. Yes, sir.

Q. You are the gentleman who brought about the purchase of these wampum belts from Dr. Crane? A. Yes, sir.

Q. What have you done in connection with investigation of the history, tradition and customs of the Indians since the time your mission among them ceased? A. Well, I have studied such works as I could have access to, a large number of books and pamphlets which I have in my possession, and have been among the Indians a good deal.

346 Q. Attended their ceremonies of different kinds? A. Yes, sir.

Q. Talked with different members of Indian tribes? A. Yes, sir.

Q. Have you a large acquaintance among them at the present time? A. I have.

Q. Taken a great deal of interest in their affairs? A. Yes, sir.

Q. Have you settled disputes for them? A. Several times.

Q. Just explain the circumstances under which these wampum belts were purchased from Dr. Crane? A. I was invited to Albany by telegram
347 to meet some of the members of the Board of Commissioners of the State for the preparation of the Columbian Exposition, the State Exhibit. After arriving there they stated to me they desired me to take a membership and take charge of the Indian Exhibit. I asked leave of absence from the conference of the church to which I belonged, which was granted. Senator McNaughton was chief executive officer; that was his designation in the Board. I was put in charge of this work. At one of the interviews I had with him—I was in constant communication with him, and spent from
348 four to six weeks in Albany in the Winter of 1892-3 in preparation for the exhibit. It was necessary to read up such works and references as I could find in order to make plans for the bark houses; the construction of them was committed to me——

Q. Without interrupting—— we want to get at the wampum belts? A. I desired in these houses an exhibit of those wampum belts. Dr. Crane, whom I knew, wrote me that he had these belts, that he bought them of Gen. Carrington, who bought them of the Indians. He suggested in his letter it would be a proper thing for them to be within the bounds of New York State, that they

belonged within the bounds of New York State properly. I laid this matter before Senator McNaughton, and he took me into Mr. Thacher's office, which was in the next room, and laid the matter before him. Mr. Thacher stated he could not very well see how money could be taken from the appropriation made by the State, and yet wished that the wampum belts might be brought back to the State. My idea was that the Commissioners should buy the wampum or arrange for the purchase in some way. Mr. Thacher and Senator McNaughton held a few moments' conference together—I didn't hear what they said—and Mr. Thacher handed me a check. He asked me first what the price was. I told him what Dr. Crane's price was, $500, and he handed me the check. 349 350

Q. Is that the check which you refer to? (Handing witness paper). A. Yes, sir.

(Check marked Ex. B, F. J. M.)

"ALBANY, N. Y. March 24, 1893.

Albany City National Bank pay to the order of Oliver Crane, Esq. in full payment for wampum belt, Five hundred dollars 00/100. $500 dollars. JOHN BOYD THACHER.

John Boyd Thacher.

Endorsed as follows: Pay to the order of Mrs. Sibilla Bailey Crane, 351

OLIVER CRANE,

Pay to the order of Henry Bailey, SIBYLLA BAILEY CRANE.

HENRY BAILEY

ANDREAS BLUMM. (Bank stamps.)"

Q. You sent it to Dr. Crane? A. He requested me to send it to Dr. Crane.

Q. Did you receive the wampum belts from Dr. Crane? A. Yes, sir. They were in the Art Museum at Boston. Dr. Crane was at Winter Park,

352 Florida. He sent an order to the curator of the Museum to ship them to me.

Q. You received them? A. Yes, sir.

Q. Took them to Chicago? A. Yes, sir. I should say to Albany first, to Mr. Thacher, turned them over to him.

Q. Were they afterwards exhibited at the Chicago Exposition during the whole time of the Fair? A. Yes, sir. I suppose during the whole time. They were exhibited. I don't know when they were put on exhibition; I presume at the commencement.

Q. They are the same wampum belts here in Court? A. Yes, sir; they are.

353 Q. Did you know Thomas Webster? A. I knew him; yes, sir.

Q. Did you ever have any conversation with him in regard to these wampum belts? A. Yes, sir.

Q. Did you ever see any other wampum belts? A. I did.

Q. Did he ever offer any other wampum belts for sale?

Mr. Paige: I object to that.

The Court: To the witness?

Mr. Delehanty: Offer to him or anybody in his presence.

The Court: I will take it.

354 Exception.

A. He had two other wampum belts. Mr. Thacher wished me to go to Webster and get from him an authoritative statement concerning the belts, the reading of them. At that time he offered two other belts to me, asked me if I would buy them.

By Mr. Paige:

Q. That was after the sale of these belts? A. Yes, sir.

Mr. Paige: I don't object, then.

The Witness: Daniel La Forte went with me and acted as interpreter.

355

By Mr. Delehanty:

Q. Mr. Webster spoke the indian language almost exclusively? A. Yes, sir; I think he could not speak English; Daniel La Forte acted as interpreter.

Q. Were you acquainted with Chief John Buck? A. Yes, sir.

Q. Who was he? A. He was the hereditary wampum keeper of the Six Nations, so called everywhere, residing in Canada, an Onondaga Chief.

356

Q. An Onondaga Chief residing in Canada? A. Yes, sir.

Q. Did you ever see any wampum belts in his possession? A. Yes, sir.

Q. Were they any of the wampum belts here in Court? A. No, sir; not these.

Q. Have you a photograph of the belts which you saw in his possession? A. Yes, sir.

Mr. Delehanty: I desire to offer the check marked Exhibit B in evidence.

The Court: All right.

(Witness produces photograph.)

357

By Mr. Delehanty:

Q. I show you a photograph?

Mr. Paige: It is the first picture which follows page 32 of Exhibit 1.

Mr. Delehanty: It is the original of the picture which Mr. Paige has just referred to?

Mr. Paige: Yes; the first picture which follows page 32 of what I have been calling Exhibit 1.

By Mr. Delehanty:

Q. Do you recognize in that group of persons the John Buck to whom you refer? A. Yes, sir.

Q. Which one is it? A. He is the person stand-

358 ing there (indicating). The third from the left and the fourth from the right.

The Court: The reporter may put a mark over his head.

(Mark placed above head of person designated.)

Q. Are the wampum belts exhibited in that picture the same as those which you saw in his possession? A. So far as they are defined; not all of them are well defined in the picture, although that was an original photograph.

Q. When did you see these wampum belts in his
359 possession? A. October, 1891; on the occasion of the unveiling of a monument to Red Jacket at , near Cayuga, in this State.

Q. Red Jacket was a Seneca chief during his lifetime? A. Yes, sir.

Q. This was at the ceremony of the unveiling of his monument? A. Yes, sir; a monument erected over what was believed to be his birthplace.

Q. Are you able to say, from your knowledge and observation and study of the affairs of these Indians, whether there is any such thing in existence at the present time as the Ho-de-no-sau-nee? A. From the information that I gathered among
360 Indians there is only a misty figment of it.

Q. Did you ever see an Indian other than Webster and Buck who claimed that these wampum belts had any authority among the Indians, or that they were depended upon for their history or record? A. Webster told me——

Q. Other than Webster? A. Indians, many of them, have stated on my inquiring, that these were not authoritative any more; that they had changed their form of government.

Q. Do you know whether or not the different Indian tribes here have changed their form of government to comply with the Indian law of the

State, having a constitution and by-laws the same as are authorized under the law? A. The Senecas, both the Cattaraugus and Alleghany Senecas have one government, a republican form of government, patterned after onrs. For the last—as I understand it—ten to twelve years, the Onondagas have been struggling into the same form of government. As to the other tribes the ancient form of government has never been abandoned; some of them are in a somewhat chaotic state, the Onondagas in particular. 361

Q. Do you know whether these wampum belts were looked upon by the Indians in any other way than as relics or curiosities? 362

Objected to.

Q. State, if you know, the manner in which the Indians referred to and looked upon these wampum belts, their significance?

Mr. Paige: I object, unless he gives the Indian, and what he said.

The Witness: Shall I give living and dead Indians, both, what they said?

The Court: Yes; give them both.

A. Well, Daniel LaForte, whose Indian name is Te-hes-ha, stated to me these were relics now, sort of heirlooms, like old spinning wheels, old almanacs, &c. That was the statement he made to me. Thomas Webster said—— 363

Mr. Paige: I object to that as hearsay. He is the man who sold the wampum.

The Court: I will take the evidence subject to your objection. I think, perhaps, it is hearsay, but I will take it subject to the exception.

Exception.

A. When I asked Webster to read these, explain the belts to me, I asked him if they were authoritative, and he said: "No; our people don't care any-

364 thing about them any more; we don't use them." Harrison Half-town, one of these Senecas on the Alleghany Reservation——

By Mr. Paige:

Q. Give the dates of those two prior conversations, if you can? A. Soon after Mr. Thacher bought the wampum belts.

Q. It was after? A. Yes, sir.

Q. Was the conversation with Harrison Half-town after also? A. Yes, sir.

Q. This receipt set up in the complaint, which purports to have been a receipt given for the wam-
365 pum belts, the subject of this controversy, was prepared by whom, if you know? A. Dr. Crane asked me to put into the receipt some reference——

Q. You prepared that receipt? A. Yes, sir.

Q. Did Mr. Thacher make any suggestions in reference to it? A. No, sir.

Q. You conducted the entire transaction for them? A. Yes, sir; he said the check would be a sufficient receipt for him.

Q. Prior to the commencement of this action, and on or about the 30th day of August, 1897, did
366 you have an interview with Daniel La Forte and his brother Thomas La Forte? A. Yes, sir.

Q. Where? A. On the Onondaga Reservation.

Mr. Paige: After the bringing of this action?

Mr. Delehanty: No; before the bringing of this action, the 30th of August, 1897.

Q. What, if anything, did he say with reference to any authority given by him to bring an action of this kind? A. I asked him if he knew that a suit was commenced. He said he gave no authority for the commencement of a suit, and said he did not suppose that was what he was signing as authority.

(Paper produced and marked Exhibit C, 367
F. J. M., for identification.)

Q. I show you Exhibit C, and I ask you if you know in whose handwriting that paper is? A. Well, sir, that is in my handwriting.

Q. When did you write that paper? A. It was August 30th, 1897.

Q. Where were you at the time? A. In the house of Daniel La Forte, on the Onondaga Reservation.

Q. What does that paper contain? A. It contains La Forte's statement to me in answer to questions which I asked him.

Q. And in regard to this suit, and the com- 368
mencement of this action? A. Yes, sir; and council of the chiefs, etc., and the wampum—the sale of the wampum.

Q. Is that his signature on the paper (indicating)? A. Yes, sir.

Q. Where? A. At the foot of it.

Q. What is the signature there? A. Daniel La Forte, President of the Six Nations, New York State Indians.

Q. Is that a correct statement of what he said to you on that occasion? A. Yes, sir. I didn't make that statement until he had given me the facts. I put them down and read them to him; asked him 369
if they were accurate; he said those were.

Q. He signed his name? A. Yes, sir.

Mr. Delehanty: I will offer it in evidence.

370 SUPREME COURT,

ONONDAGA COUNTY.

THE ONONDAGA NATION and TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all the HO-DE-NO-SAU-NEE,

vs.

JOHN BOYD THACHER.

371

STATE OF NEW YORK, County of Cattaraugus, City of Olean, } ss.:

JOHN WENTWORTH SANBORN, being duly sworn, deposes and says:

I am the person mentioned and referred to in the complaint herein by the above name; I am now and have been for many years personally acquainted with Daniel LaForte, the President of the Onondaga Nation and the person referred to by the name of
372 Te-hes-ha, one of the plaintiffs in the above-entitled action; I am also, and have been for many years, personally acquainted with the Rev. Thomas LaForte, the brother of said Daniel LaForte, and a clergyman of the Wesleyan Methodist Church, also a member of the Onondaga tribe or nation of Indians. I am familiar with the handwriting of each of said persons; the signature subscribed to the paper dated August 30, 1897, hereto annexed and marked "Exhibit A," was made by Daniel LaForte, in the presence of deponent, on the date above mentioned; the signature subscribed to the paper dated August 30, 1897, hereto annexed and

marked "Exhibit B," was made by Thomas LaForte 373
in the presence of deponent on the date above mentioned. Both Daniel LaForte and Thomas LaForte, who signed said papers respectively, are and each of them was perfectly familiar with the contents thereof at the time of subscribing the same and their action in so subscribing said papers was their free act and deed.

JOHN W. SANBORN.

Subscribed and sworn to before me }
this 9th day of June, 1898. }

WM. V. SMITH,
Notary Public. 374

[SEAL.]

Exhiblt A.

STATE OF NEW YORK, }
Onondaga Reservation, } August 30, 1897.

I, DANIEL LA FORT, President of the Six Nations of New York State Indians, do hereby certify that in the Onondaga Council there are twenty-three (23) chiefs, and twelve (12) constitute a quorum. Mrs. Converse wanted the chiefs called together. Only five (seven less than a quorum) were present. She urged them to authorize her to make a demand 375
for the wampums which had been sold. It was in no way a legal proceeding. I, as President of the Onondaga Nation, presided over the meeting, but I did it to please the others (the five men and Mrs. Converse). The meeting adjourned because there was not a quorum present, & its acts could not be legal.

Some time ago Mrs. Converse bought one or more wampum belts of Thomas Webster, the wampum keeper. Lucy Pierce was present when the purchase was made. The Indians do not know what

376 she did with them. We do not use the wampum any more. They are only a relic now. The old customs are fading away, and, as we do not use the wampums as of old, we don't have as much interest in them. Mrs. Converse is not a chief and never has been. She is not the originator of any new society of, or for, Indian women, for there is no such society or order among our women.

The demand which Mrs. Converse makes (a copy of which is hereto annexed) of the wampum belts described in the letter (a copy of which is hereto annexed) cannot be made on behalf of the Ho-de-
377 no-sau-nee, for the Ho-de-no-sau-nee is the name given to the League of the Six Nations (meaning the Long House). When the Seneca Nation adopted a municipal form of government a few years ago its connection with the League ceased, and its interest in the wampum ceased also.

I certify further that Harriet Maxwell Converse, whose name purports to have been subscribed to the paper (a copy of which is hereto annexed), had and has no legal authority to represent the Onondaga Nation in the matter described in said paper, and had and has no legal authority to demand in behalf of said Onondaga Nation the delivery of the
378 wampum therein described, or to represent said Onondaga Nation or any of the Nations constituting the Six Nations of Indians of New York State as its attorney, in fact or otherwise.

I certify further that Hon. John Boyd Thacher came honestly and fairly into possession of the wampums which he has by purchase from a white man; who, in turn, bought them of General Carrington, U. S. Army; who, in turn, bought them of the late Thomas Webster, from whom Mrs. Harriet Maxwell Converse bought hers. The wampums which are in Washington & Albany are in

safer hands than if they were kept on the reservation, and they should remain where they are. 379

(Signed,) DANIEL LA FORT,
President of the Six Nations of N. Y. State Indians, & also President of the Onondaga Nation.

Signed in the presence of
JOHN W. SANBORN.
No. 248 WEST 15TH ST.,
NEW YORK CITY, August 17th, 1897.

SIR:

The Onondaga Nation does hereby demand the delivery to it of the following wampum: 380

One Belt of dark wampum beads representing the "Confederation organization of the Five Nations under Hiawatha."

One Belt representing the first treaty stipulation between the Six Nations and General Washington, picturing in wampum bead-work, the Council House, General Washington, the To-de-da-ho, and thirteen representatives of the States.

A Fragment of a belt representing the first approach to the Indians of the "People with white faces."

A Fragment of a narrow belt representing the unity of the Five Nations. 381

The first two being the same wampum which were on exhibition at the World's Fair at Chicago, and there described as "Loaned by John Boyd Thacher."

This demand is made upon the ground that the above-described wampum is the property of the Ho-de-no-sau-nee, and that the Onondaga Nation is either its owner or its official custodian.

THE ONONDAGA NATION,
(by) HARRIET MAXWELL CONVERSE,
Its Attorney in Fact.

To JOHN BOYD THACHER.

382 **Exhibit B.**

ONONDAGA RESERVATION, Aug. 30, 1897.

Rev. Thos. La Fort, brother of President Daniel La Fort, makes the following statement over his own signature:

"Mrs. Harriet Maxwell Converse has no legal authority to demand wampums on behalf of the Onondagas. Her so-called power of attorney is not legal. No quorum of chiefs was present at the meeting which she alleges gave her power of attorney; And, moreover, even if every chief had been present and had voted to give Mrs. Converse power
383 of attorney it would not have been a legal proceeding, because it is utterly contrary to Indian law and usage to delegate such authority to a woman, and a white woman at that."

I, Thomas La Fort, pastor of the Wesleyan Church, Onondaga Reservation, have read the above statement over and do hereby subscribe to the truth of it.

THOMAS LA FORT.

Signed in the presence of
JOHN W. SANBORN.

384 *Cross-examination by Mr. Paige:*

Q. How long have you known Dr. Crane? A. Dr. Crane I have known about eleven years.

Q. About eleven years now? A. Yes, sir; about eleven years ago I made his acqaintance.

Q. That would be before 1890? A. Yes, sir.

Q. I think you stated he was a Presbyterian minister? A. He was missionary of the Presbyterian Church, I think, to Syria for some twenty-five to thirty years.

Q. At the time the wampum belt came to Mr. Thacher, in 1893, where was Dr. Crane living? A. His home was in Boston.

Q. When did you first hear he had the wampum belts? A. He wrote me some months previously; I don't know how long. 385

Q. How long had he been living in Boston? A. That Summer. He had a Winter home at Winter Park, Florida, but resided in Boston a greater part of the year.

Q. For how long before that? A. I could not say.

Q. Tell us as near as you know? A. My impression is that he returned to Boston on the ocean steamship, where I met him; was returning home when I met him. 386

Q. That was when? A. 1886, I think.

Q. After that he lived in Boston and Florida? A. So far as I know.

Q. Did you know General Carrington? A. Yes, sir.

Q. When did you first meet him? A. I met him in 1890.

Q. When he was taking the Indian census in New York? A. Yes, sir.

Q. Do you know where his residence was? A. No, sir; I don't know where his residence was at that time; he came from Washington. I had the impression he was detailed by the Government, the 387 United States Government.

Q. How long was he in New York at that time? A. New York State?

Q. Yes? A. That I don't know.

Q. After 1891, after he finished the census? A. I think he told me that he took about eight months to take this census.

Q. Where did he go then? A. I am sure I could not tell.

Q. You don't know? A. No, sir.

Q. Did your acquaintance cease after that? A.

388 I had some correspondence with him at Hyde Park, Massachusetts.

Q. In what year? A. It must have been about the time or just previously to the sale of the wampums.

Q. Do you know when he sold the wampum to Dr. Crane? A. I am not sure, but I will give you my impression, if that will do.

Q. Yes. A. My impression is that he sold them to Dr. Crane soon after he completed the census.

Q. How soon? A. Well, I should think, within two or three months; I should judge so.

389 Q. I think you stated that you applied to Senator McNaughton to purchase the wampum because of a letter you received from Dr. Crane? A. Yes, sir; I received many letters from Dr. Crane in a social, friendly way. We were on shipboard together. In one he mentioned these wampum belts.

Q. You were on shipboard together some years before? A. Yes, sir; in that way we became acquainted.

Q. In one of those letters he mentioned these wampum belts. That would be when, in the Winter or Spring of 1893—early Spring? A. It was before that. I can tell just when. I was in Lock-
390 port. It was about one year or one year and a half after I met Dr. Crane on shipboard. I received several letters from him; and then immediately after the census was taken by Gen. Carrington—very soon after; I should say within a few months—I received a letter from Dr. Crane in which he stated he had purchased some wampums, which he considered very interesting and valuable.

Q. It was within a few months after the completion of the census by Gen. Carrington? A. That is my impression; it was not a great while after that.

Q. When was it you received a letter which led

you to go to Senator McNaughton? A. That was 391
in the Winter, I think, of 1892.

Q. 1892–3? A. Yes, sir.

Q. I think you said he took you to Mr. Thacher? A. I read an extract from a letter to Senator McNaughton; I had a desk in his office. We went right into Mr. Thacher's room immediately, and he laid the matter before Mr. Thacher. They mutually agreed that there was no appropriation by the State for the purchase of any such things, and they conferred together a little longer. Mr. Thacher then handed me this check and said, "You attend to this and send for the wampum belts." 392

Q. So that the wampum belts had not been received by you or by anybody? A. Not at that time.

Q. Not at the time he gave you the check? A. No, sir; immediately after receiving Dr. Crane's letter Senator McNaughton asked me to go to Boston and examine those wampum belts to make sure they were authentic, and that the statement concerning them was authentic, and that they were there as described.

Q. Where were they? A. In the Boston Art Museum, loaned by Dr. and Mrs. Crane.

Q. This was after you got the check? A. No, 393
sir.

Q. When was it? A. After I received the letter from Dr. Crane, describing the belts quite fully, and suggesting they ought to be within the bounds of New York State. The Senator asked me to go down there and examine them, take their measurements, get an accurate description of them.

Q. You did? A. I did so.

Q. Then what did you do? A. I returned and laid before him a description of the belts which I made. It was immediately after that that the check was drawn, after I reported on the belts.

394 Q. After you reported on them, and before they had been received? A. Yes, sir.

Q. I read what purports to be a copy of a letter written by you to Doctor and Mrs. Crane:

"WORLD'S FAIR.
Office of
JOHN WENTWORTH SANBORN,
Director-in-Chief
of the
INDIAN EXHIBIT OF THE STATE
OF NEW YORK
at the
WORLD'S COLUMBIAN EXPOSITION.

395 "THE CAPITOL, Albany, N.Y.....189..
Naples, N. Y., March 7, 1893.

DEAR FRIENDS,

DR. AND MRS. CRANE:

The precious wampum came in good order on Saturday and will soon be shipped with our other curiosities to Chicago, and will add very much to the interest of the N. Y. Indian Exhibit. I will see to it that the descriptions are in larger type, and printed in fine style, giving the history of the past and the recent history as well, so as to set forth all the interesting facts in connection with the wampum.

396 I enclose a form of receipt which, on receipt of the money due you, you may if you please sign unless the Senator should make out a form. It will not be necessary to make two copies except for historical interest.

Concerning my type-writer, I would say it is a Remington, No. 2, and works perfectly and rapidly.

I am to have a picture of these wampums taken, and engraved for insertion in my History of the Six Nations, and I shall there give the history of it and make note of our purchase of it from you and Mrs. Crane. I am almost engulfed

with work, but it is a pleasure to stop to write 397
to you.

Sincerely yours,
JOHN W. SANBORN.

P. S. I did not date the receipt. I will leave that to you to do when the money arrives.

Yours,
J. W. S."

Q. Did you write that letter? A. Yes, sir.

Q. Enclosed in it, as I am informed, was a receipt, of which I am informed the following is a copy: 398

"RECEIPT FOR WAMPUM.

WORLD'S FAIR
Office of
JOHN WENTWORTH SANBORN,
Director-in-Chief
of the
INDIAN EXHIBIT OF THE STATE
OF NEW YORK
at the
WORLD'S COLUMBIAN EXHIBITION.

THE CAPITOL, Albany, N. Y., ..., 189..

Received from Hon. Donald McNaughton, Chief Executive Officer of the Board of General Managers of the New York Exhibit at the World's Fair, and John Wentworth Sanborn, Director-in-Chief of the New York Indian Exhibit at the World's Fair, acting for the State of New York, Five Hundred Dollars ($500.00) for one case of four Wampum Belts, as follows, viz.: One Belt of dark wampum beads, representing the Confederation organization of the Five Nations under Hiawatha; One Belt representing the First Treaty stipulation between the Six Nations and General George Washington picturing in Wampum bead-work the Council House, General Washington, the O-do-ta-ho, or President of the tribes, and thirteen representa- 399

400 tives of the Colonies; also two fragments of other Belts, one representing the first approach to the Indians of the 'People with white faces,' and the other a narrow belt representing the unity of the Five Nations."

Did you enclose that receipt in that letter? A. Yes, sir.

Q. That receipt, I suppose, describes these four belts according to your idea of them? A. Well, in a general way, so it could be understood, I thought.

Q. Which of those four belts is "One Belt of
401 dark Wampum beads, representing the Confederation organization of the Five Nations under Hiawatha"? A. The widest one here (indicating).

Q. The large belt on the diagram in Exhibit 1? A. Yes, sir.

Q. Which is the belt "Representing the First Treaty stipulation between the Six Nations and General Washington, picturing in Wampum beadwork, the Council House, General Washington, the O-do-ta-ho, or President of the tribes, and thirteen representatives of the Colonies"? A. This is the one (indicating).

Q. That is the upper belt on the diagram already
402 described in Exhibit 1. Which is the belt representing "The first approach to the Indians of the 'People with white faces'"? A. This one (indicating).

Mr. Paige: The lowest one on the diagram on Exhibit 1.

Q. Which is the narrow belt "Representing the unity of the Five Nations"? A. This one (indicating).

Mr. Paige: That is the other belt on diagram, Exhibit 1.

Q. I suppose you then believed when you wrote that receipt that the first belt which you referred

to was a Five Nation belt contemporary with Hiawatha? A. That was my understanding of it. 403

Q. It is now, is it not? A. Yes, sir.

Q. You then believed that at that time it was the property of the Five Nations? A. It is one of the wampum belts which has been retained among the Five Nations.

Q. Did you believe that it was at the time of Hiawatha, the property of the Five Nations? A. I believed that it was made to commemorate that event.

Q. By the Five Nations? A. As to who made it I never have been able to swear positively. 404

Q. I do not suppose you can swear positively, but I want your belief? A. I have had the impression that the Indians made it.

Q. You mean that the Five Nations of Indians made it? A. Some of them.

Q. Yes; some of them. It was used to commemorate the union of the Five Nations? A. Yes, sir.

Q. That is your belief also regarding the last belt described, the narrow belt? A. Why, yes; my impression is that that was made to commemorate the union of the Five Nations.

Q. Your belief in regard to the belt which you have thirdly described was that it was made by the Five Nations, or some of them, to represent the first approach of Indians to "People with white faces?" A. My impression about that is that either they made it or the French helped them make it; it was to commemorate that event. If the French made it, they gave it to them, I suppose; it was certainly in possession of one of the chiefs of the Five Nations. 405

Q. Your belief is that it was made contemporary with the first approach to the Indians of the "people with white faces" and to commemorate

406 that approach? A. That was my impression from the information given.

Q. It is yet? A. I know nothing to the contrary.

Q. Your belief in regard to the belt secondly described was that it was made to commemorate the treaty between the six nations and Gen. Washington? A. It was a commemorative belt. I never regarded that as an official belt of that occasion.

Q. Whether it was to commemorate—— A. Yes, sir. I regard that as a belt commemorating the event.

Q. And made about that time? A. Yes, sir;—
407 why, I should presume so.

Q. In the receipt which you sent to Dr. Crane you say that you received from Hon. Donald McNaughton and for yourself, acting for the State of New York, five hundred dollars. Was it your intention that that purchase should be made by the State of New York when you sent that receipt? A. I can tell you my own wishes; I was anxious to have those wampum belts on exhibition somehow under the authority of the State or someone acting for the State, in our bark houses. I went to Senator McNaughton with that desire, supposing that it would be possible for the State, out of
408 the appropriation, to buy those wampum belts. I was not particular as to who owned them if only they could be within the bounds of this State, where they could be on exhibition. That was my ruling desire under the whole thing. That is the reason why I went to these gentlemen and laid this matter before them, saying that I desired that these wampum belts should be back within the bounds of this State, where it seemed they belonged, as the Indians were within this State. They were to be represented at the Exposition. I asked the Senator if it was not possible for the State to buy

those wampum belts. I had that expectation— 409
that the State would buy them, so I laid it before him. And, as I stated, it was not within the——

The Court: That part of it you have covered.

Q. When you sent this receipt did you intend, and intend Dr. Crane to believe that the purchase was to be made by the State of New York? A. Dr. Crane wrote me and said——

Q. Answer my question. A. Repeat it again.

Q. At the time you sent this receipt, was it your intention and did you intend Dr. Crane to believe that the purchase was to be made by the State of New York? A. I ought to be allowed to explain 410
just ahead of that a word.

Q. Well, I have no objection to your explanation if yon won't take an hour about it. A. Dr. Crane requested me to write a receipt which would show some connection of the Board with this transaction as a sort of souvenir, for historical purposes. I think he stated about that in his letter. I drew the receipt supposing—I didn't read the check carefully to see whether it was signed John Boyd Thacher as commissioner, or John Boyd Thacher; I simply glanced at the name and saw it was all right, and sent it to Dr. Crane as requested. I had an impression that the Board of Managers 411
might come into possession of that when it came on. I was not particular whether——

Q. Is that all the explanation you have to make of that? A. That was exactly the case.

Q. Is that all the answer you want to make to my question? A. If that isn't clear——

Q. If you have anything else to say about it, say it. A. You asked me——

Q. The question I asked you was whether you intended and whether you meant Dr. Crane to believe that the purchase was to be made by the State of New York and not by anybody else?

412 That is the question I want you to answer. If you have any other answer to make, you better make it. A. I supposed that on behalf of the Commissioners, Mr. Thacher had authorized the purchase by the State.

Q. Is that all the answer you have got to make? A. That is the exact fact.

Q. All right. You said that the Onondagas were struggling to adopt some other form of government than their ancient style of government. Do you understand that the government is otherwise than by chief, as it has always been: A. It is by
413 chiefs, and yet they have been attempting to introduce modern methods.

Q. The government still is by chiefs, so far as you know? A. They have been making an effort——

Q. Is the government by chiefs? Does anybody but a chief have any voice in the government, so far as you know? A. In the latter government they have——

Q. Does anybody except the chief have any voice in the government of the Onondagas, so far as you know? A. Evidently not.

Q. The chiefs are appointed as they always have
414 been, are not they, so far as you know? A. They have adopted a constitution which is different from the old form.

Q. So far as you know, are the chiefs appointed as they always have been? A. Not entirely.

Q. What is the difference? A. They have adopted a constitution—twelve to fourteen years ago.

Q. Anything in the constitution about the appointment of chiefs? A. Yes, sir; there is an attempt to cut loose from the old form of government.

Q. Is there anything in the constitution about the way the chiefs shall be appointed? A. I don't

recall; I haven't it with me; I have a copy of it at home. 415

Q. But you don't recall? A. Not Precisely.

Q. If it is not in the constitution, is the chief appointed in any other way than as he always has been? A. I don't consider that they have——

Q. Will you please answer my question. So far as you know, if there is nothing in the constitution about the appointment of chiefs, are chiefs appointed by the Onondagas as they always have been? A. Not entirely as they always have been.

Q. What is the difference? A. The difference is, within a few years they adopted a different form of constitution. 416

Q. Is that all the answer you have to my question? A. I think that is all; yes, sir. If I had a copy of the constitution here I conld make it clearer.

Q. I don't care about a copy of the constitution. You said Chief John Buck was hereditary wampum keeper of the Onondagas. What did you mean by that? A. He descended from a man who was one of the peers of Hiawatha, as was claimed by him and admitted by others. I said he was hereditary wampum keeper of the Six Nations.

Q. By virtue of his descent from a man who was contemporary with Hiawatha? A. Not that only; they had some other things; there was a certain form gone through with. 417

Q. Somebody appointed him? A. They had what they call a "raising up" ceremony.

Q. Somebody appointed him? A. Yes, sir.

Q. Then he was not a hereditary chieftain? A. His hereditary rights, as they called them, were ratified.

Q. His hereditary rights which he had by virtue of his descent from a man who was contemporary with Hiawatha? A. It was not by virtue of his

418 descent from a man, but it was now with him; no man could be succeeded by his own son.

Q. Did you ever hear the Onondagas divided after the Revolution, part went to Canada and part stayed in New York? A. Yes, sir.

Q. Each kept up a separate tribal organization? A. The Iroquois Confederacy was not kept up much after the Revolution.

Q. Whether the Canada Onondagas kept up one tribal organization and the New York Onondagas kept up another? A. There was a sort of rival organization.

419 Q. Do you understand each one kept up or established any tribal organization separate from the other? A. In a measure they did.

Q. Each had its own wampum-keeper? A. John Buch claimed to be the only reputable wampum-keeper.

Q. The Canada Onondagas didn't have any wampum-keeper? A. They had one; he was not the wampum-keeper for the Six Nations.

Q. Did you ever hear when the Canada Onondagas went to Canada, that the two divisions or nations divided up the wampums, part of them went to Canada and the rest stayed here? A. Yes,

420 sir; there was wampum that remained in this State, but most of it went to Canada.

Q. Remained here with the Onondagas? A. Yes, sir.

Q. Some taken by the Canada Onondagas to Canada? A. Most of them.

Q. I suppose you counted them, so you know which had the most? A. John Buck had about a bushel of them.

Re-direct examination by Mr. Delehanty:

Q. Is that the way they counted wampum, by the bushel? A. No, sir; only I counted them that

way, because he put them in a Amoskeag seamless 421
sack, which made about a bushel.

Q. This receipt which you have been testifying concerning, which you sent to Dr. Crane, as I understand, was composed and ~~compared~~ prepared by you without any consultation with Mr. Thacher? A. Yes, sir.

Q. Do you know whether Mr. Thacher ever saw the receipt? A. I don't recollect about that.

Q. The statement contained in the receipt as to what these different wampum belts signified was your own statement? A. Yes, sir.

Q. When you say that this belt which I hold in 422
my hand was made to commemorate the treaty between Washington and the Indians, you mean that it was the treaty itself? A. That it was the treaty itself?

Q. Yes. A. No, sir.

Q. Do you mean anything more than that an Indian made that to indicate his idea of a treaty—a memorial in that way? A. That is the idea of it I have.

Q. Anything different from what an artist would do in representing what his idea or conception of some historical event might be? A. Substantially that; it was probably in those early days brought 423
out and exhibited.

Q. Was that the general impression prevailing among the Indians in reference to this particular belt? A. That is where I got my information; I made some inquiries, as many as I could.

Mr. Delehanty: We offered the deposition of Gen. Carrington in evidence. In it is a receipt which I will have marked.

Marked Ex. D., F. J. M.

DEFENDANT RESTS.

424 JOHN S. CLARK, re-called.

Examined by Mr. Paige:

Q. After the Revolution, as a result of your researches, and what you have been told, are you able to say whether the Onondagas divided? A. They did.

Q. What did they do? A. Those that followed the fortunes of the King of the British Government, settled on the Grande River Reservation in Canada; those who chose remained in the State of New York, under the State government and general government.

425 Q. Did each keep up its own separate tribal organization? A. Yes, sir.

Q. As the whole nation had formerly? A. Yes, sir.

Q. Did each have its separate wampum-keeper? A. It did; had an amicable division of the wampums, and the Indians on the Grande River Reserve in Canada relinquished any rights in the State of New York to the wampums. The general government held a treaty as a confederacy with the tribes which remained who chose to remain in the State of New York, held treaties with the individual

426 tribes and separate treaties with the Onondagas, separate treaties with the Oneidas and separate treaties with the Cayugas. And the general government held a treaty with the entire confederacy, the Six Nations of New York.

Mr. Delehanty: I would like to take an objection and ask to strike out the evidence on the ground that the witness has not been shown competent to testify, as to that portion of the answer which related to the disposition of the wampums——

The Court granted the motion. Exception.

Q. Is this belt, the upper one in the diagram

Ex. 1, a record of the first treaty between the Six Nations and the general government? A. That is my understanding of it. 427

Mr. Delehanty: Same objection.

The Witness (resuming): There could be no treaty with any tribe or with any confederacy without the exchange of belts of wampum. That is the general rule with all treaties, with all tribes, that if there was no wampum present, there was a pledge given it should be furnished thereafter. Sometimes it happened they could not furnish it at the time of the treaty; but no agreement was of any binding force whatever without an exchange of wampum on both sides. 428

Mr. Delehanty: I move to strike out the answer.

The Court: Same disposition.

Exception.

The Witness: In relation to the other matter I could explain a little further if it would be agreeable to both sides: about the time that we secured the photographs of these Onondaga belts I sent a copy to Mr. Hale of Clifton, Ontario County. He immediately went to the Reserve and secured the photograph which has appeared in this case—the original—I have not seen it here, but I have one at home; I have a copy of that original at home. And the other facts that I have stated—that is a common matter in numerous histories, especially in the archives of Canada and in the archives of the State of New York which have been published, and recognized in several instances by committees of the State Legislature. 429

Q. I think you said that you had made a study of Indian matters, examined into the sites of villages, visited Indian tribes—talked with them; have you also examined many historical works on the subject, and records and maps? A. All that

430 are accessible, sir. I have spent more than thirty years at it.

BAPTISTE THOMAS, sworn for plaintiffs:

Examined by Mr. Paige:

Q. You are a Chief of the Onondagas? A. Yes.

Q. And treasurer of the Nation? A. Yes.

Mr. Paige: I show the witness the four wampums in question.

Q. How long have you known these wampums? A. Between forty and fifty years.

Q. In whose possession were they when you first
431 saw them? A. My grandfather's.

Q. Who was he? A. Thomas Commissary.

Q. What office, if any, did he hold?

Mr. Delehanty: I object to that. Unless it relates to the office of wampum-keeper it is immaterial and irrelevant; if it does relate to the office of wampum-keeper there is no evidence to show that there was any such office in existence.

The Court: I will take the answer subject to the objection.

Q. What office, if any, did he hold? A. He was
432 another Chief.

Q. Was he wampum-keeper or not? A. Well, he kept it when they brought it from Buffalo; he was appointed to take care of it. After old Commissary died the chiefs got their heads together and held a council and left it to Abram LaForte to take care of.

Q. That is, De-hat-ka-tons? A. Yes, sir. After LaForte died old Harry Webster went over there——

Q. Wait a minute. Thomas Commissary was elected keeper of the wampum by the chiefs? A. Yes, sir.

Q. Those wampums were in his possession? A. Yes. 433

Q. You have seen them occasionally from that time ever since? A. Yes, sir.

Q. They were used at councils and conferences, I suppose? A. Yes.

Q. By Thomas Commissary? A. Yes.

Q. And Abram LaForte or De-hat-ha-tons? A. Yes.

Q. And Harry Webster? A. Yes.

Q. I show you this picture in Exhibit 1. Do you remember all those wampums (indicating)? A. Yes. 434

Q. Were they all in possession of your grandfather at the time you describe? A. Yes.

Q. Is there any different method of appointing chiefs in your Nation now from what there always has been? A. The same way they do yet.

Q. The same way they always did? A. Yes, sir.

Cross-examination by Mr. Delehanty:

Q. Your name is Baptiste Thomas? A. Yes, sir.

Q. I show you Exhibit 6; I ask you if that is your mark and your signature on that paper? A. It must be; yes. As long as it is my name there would be a mark with it. 435

Q. On the 26th of February, 1896, was that signed by you in that way? A. Yes.

Q. And signed by the other persons whose names appear under yours? A. Yes; I guess they are.

Q. How many chiefs of the Onondaga Nation were there at that time? A. Thirteen or fourteen; somewhere along there.

Q. How many chiefs of the Onondaga Nation

436 were there? Not how many signed the paper? A. The number of them?

Q. Yes. A. There is about 24 living now.

Q. In whose handwriting is the portion of the paper above the signature, if you know? A. It must be that man (indicating Mr. Paige).

Q. How much was paid to you for signing the paper? A. For signing that?

Q. How much did you get? A. The whole amount what I got—I got $500.

Q. You got $500? A. Yes; the whole.

Q. Who gave you the $500? A. That man (in-
437 dicating).

Q. Mr. Richmond? A. Yes, sir.

Q. What did you do with the $500? A. Kept about a couple of hundred dollars.

Q. For your own use? A. Oh, no; for the Nation expenses.

Q. What did you do with the $500? A. The chiefs took it.

Q. What chiefs? A. The Indians.

Q. Didn't you take any of it for yourself? Didn't you keep any of it? A. Of course, what was left I kept.

Q. How much did you keep? A. $200.

438 Q. For your own purposes? A. No, sir.

Q. You kept $200? A. Yes, sir.

Q. What did you do with the $200 you kept? A. I paid debts with it. They were repairing the council house; we were in debt; we fixed over the council house.

Q. Didn't you keep any of it for your own purposes? A. No, sir. It was not my business.

Q. I didn't ask you whether it was your business. Didn't you buy any horses or wagons? A. No, sir.

Q. Or anything else for your own use out of that money? A. No, sir.

Q. You say you spent $200 in repairing the council-house? A. Yes, sir. 439

Q. What did you do with the other $300? A. Paid the rest of the Nation debts and gave it to our poor people; helped them right along.

Q. Is it a fact that each of the persons who were present on that occassion and signed that paper took $25 out of that money? A. I guess they did.

Q. They did, didn't they? A. Yes.

Q. Kept it, each one of them? A. I did; I don't know what they done.

Q. But they got it? A. I paid them.

Q. You paid them $25 apiece out of the money? 440
A. Yes: that is just what a chief is entitled to.

Q. They decided they should have $25 apiece? A. Yes, sir.

Q. They signed these papers, selling the wampum belts to the State of New York?

(No answer.)

Q. Is that right? A. No; I guess not.

Q. Well, you signed this paper, whatever it is? A. Yes, sir.

Q. Where did you hold that council? A. Right there at Daniel LaForte's house.

Q. At what time of day was it? A. Along in the afternoon. 441

Q. Wasn't it late in the night? A. No, sir.

Q. Did yot notify all the chiefs to be present? A. Yes. Of course, the marshal went around, and notified every one to come.

Q. Who was the marshal who notified every one to come? A. Jim Palmer.

Q. When did he notify them, the same day? A. Oh, no; two or three days beforehand.

Q. Who else was present when you had this council or meeting, when you signed this paper, besides the persons whose names appear on the paper? A. Daniel LaForte was one.

442 Q. Was Mr. Paige present? A. Yes, sir.

Q. Was there anybody else besides the chiefs present? A. Yes, sir; This gentleman over there, (indicating).

Q. Mr. Richmond? A. Yes, sir. And the lady over there (indicating).

Q. Mrs. Converse? A. Yes, sir.

Q. Anybody else? A. No, sir.

ADELBERT G. RICHMOND, sworn for plaintiffs.

Examined by Mr. Paige:

443 Q. Your residence? A. Canajoharie.

Q. Your business? A. Banking.

Q. You are also honorary curator of the State Indian Museum? A. Yes, sir.

Q. Were you present in Onondaga with Mrs. Converse and myself in August, 1897, at a time when a certain paper was executed by certain chiefs? A. Yes, sir.

Q. Have you got that paper? A. I have not with me.

Q. You have got it? A. I have it.

Q. Where? A. At home in the bank vault.

Q. In the vault of the bank? A. Yes, sir.

Q. Did you sign that paper as a witness? A. I
444 did.

Q. Did the chiefs, whose names purport to sign it, sign it in your presence? A. Yes, sir.

Mr. Paige: I put the question in that way with Mr. Delehanty's permission. I will produce the paper hereafter.

Mr. Delehanty: I have not seen the paper, but it is to go in afterwards.

(To be printed.)

Cross-examination by Mr. Delehanty:

Q. Who prepared this paper which you have referred to? A. I should say Mr. Paige wrote it.

Q. Did you request the persons who signed it, 445
to sign it? A. No, sir; I think not.

Q. Where were they when they signed it? A. At Daniel LaForte's house.

Q. How many persons signed it? A. I really can't tell you that.

Q. Who asked you to go there and have it signed? A. Well, it was an arrangement between Mr. Paige, Mrs. Converse and myself to go there.

Q. Mr. LaForte, or the other people who signed the paper, did not request you to go there? A. They did not; no, sir.

Q. How long have you known Mr. LaForte? A. 446
Two years, perhaps.

Q. Did you know Mr. Webster? A. I have seen him; I don't know him; I never talked with him.

Q. Did you buy any wampum belts from him? A. No, sir.

C. Have you not purchased wampnm belts that are now in the New York State Library at Albany? A. Yes, sir.

Q. Where did you purchase them? A. I think those were purchased through Mrs. Converse.

Q. Of whom? A. Different ones.

Q. Different Indians? A. Yes, sir.

Q. Among the Onondaga Nation? A. I can't 447
tell you about that. I don't know.

Q. How many belts were purchased? A. Well, upwards of ten.

Q. They were purchased before this paper, which purports to have been executed on the 26th of February, 1898, was actually executed? A. I should say some of them were.

Q. They were in possession of the people claiming to represent the University? A. Whatever the paper showed.

448 **D.**

New constitution of the Onondaga Nation of Indians residing upon the Onondaga Indians Reservation in the County of Onondaga in the State of New York for the purpose of securing to take a better protection and more perfect satisfaction in the manner of intercourse between foreign nation and at home, viz: We therefore, the chiefs of said nation of Indians, adoped the following rules and Regulation this ninth day of July in the year of our Lord 1896.

449 1st. The chiefs of the Onondaga nation of Indians shall have power to elect President Secretary Treasurer and marshal and they shall be elected annually from amongst those number of the chiefs of said nation.

2nd. The sachem chiefs shall be enrolled in the Book of records, which shall be kept by the secretary of the nation in each meeting of the chiefs; roll shall be called by the secretary of the nation, eight of there number of the chiefs shall constitute a Quorum for the transaction of national business; the chiefs whose age under twenty-one years of
450 age shall not be entitle seat in council and to all Bills for the appropriation of public moneys the assent of eight of the chiefs in council shall be necessary in order that the bill should become a law.

3rd. The annual meeting of the chiefs for the electing President secretary treasure and marshall shall be held annually July 9 in each year.

4th. It shall be the duty of the President treasurer secretary and marshall to Preside at all the meeting of the chiefs, having only a casting vote in case of a tie and to communicate to the council at

every session of statement of the condition of the 451
national business.

5th. It shall be the duty of the secretary to keep the minutes of the proceedings of the council and to draw his warrants on the treasurer and to keep register of the same for all moneys appropriated and to cause such warrants to be the duty signed by the president and secretary and deliver them who are entitled thereto.

6th. It shall be the duty of the president and secretary of the public national land and stone quarry the assent of eight of the chiefs in council 452
shall be necessary to leased and signed by the President secretary and treasurer and the Agent shall draw the agreement between the parties; the treasurer shall furnish a bond for Five hundred dollars to be deliver before the councillers and the bond shall appear before the councillers of accept him shall be final.

7th. No person or persons who are not members of the Onondaga nation of Indian shall have a right to become as members or receive the annuity money without the consent of the councillers or any chiefs or sachem who may received money by Bribery 453
and said the council shall be the duty amongst the chiefs to dispose him.

The foregoing rule and regulation adopted by the chiefs of the Onondaga Nation of Indian on this ninth day of July in the of our Lord 1896.

OFFICERS.

President, BAPTIST THOMAS,
Vice-President, ANDREW GIBSON,
Secretary, DANIEL LAFORT,
Treasurer, WILSON REUBEN,
Marshal, SIDNEY ISAAC.

454 We the undersigned chiefs and sachem do hereby declare approved and indose the foregoing rules and regulation adopted.

1—Babtist Thomas,
2—Orris Farmer.
3—William Webster.
4—Wilson Reuben
5—Charles Lyons.
6—Andrew Gibson,
7—John R. Farmer,
8—Daniel LaFort,
9—Emmett Lyon,
455 10—Albert Kennedy,
his
11—Hawley x Hill
mark
his
12—Frank x Logan
mark
13—Asa Wheelbarrow
14—George Crow,
his
15—Jacobs x Big Bear
mark

E.

456 The Onondaga Nation does hereby authorize Harriet Maxwell Converse to recover all wampum of which it ever was in possession and all to the possession of which it or any of the Chiefs or Sachems or its Wampum-keeper or the Wampum-keeper of the Five Nations or the Six Nations was ever entitled, and to that end does make her its attorney in fact, and authorizes her to employ counsel to sue in the name of the nation in all courts and to use all other means.

Done by us the chiefs and Sachems in full and

regular council assembled in the Onondaga Reservation, this thirteenth day of July, 1897. 457

DANIEL LAFORT,
ORRIS FARMER,
CHARLES LYON,
JOHN FARMER,
JACOBA SCANADOAH,
BAPTISTE (x) THOMAS,
JARVIS (x) FARMER,
Marshall of the Nation.

A. G. RICHMOND,
(Witness as to the two marks above).

458

F.

SUPREME COURT,

ONONDAGA COUNTY.

The ONONDAGA NATION and TEHES-HA, an Onondaga Indian, on his own behalf, and also on behalf of all of the HO-DE-NO-SAU-NEE, 459

Plaintiffs,

vs.

JOHN BOYD THACHER,
Defendant.

SIR:

I have been retained by and hereby appear for the defendant John Boyd Thacher in the above-entitled action, and hereby admit service of a copy

460 of a summons and complaint therein, also a copy of an affidavit purporting to have been made by one Harriet Maxwell Converse, a copy of an undertaking purporting to have been executed by one Adelbert Gillette Richmond, and a copy of an order purporting to have been signed by Alonzo P. Strong, County Judge of Schenectady County.

All papers herein may be served on me at my office in the Commercial Bank Building, Albany, N. Y. My post-office address is Commercial Bank Building, Albany, N. Y.

Dated: Albany, N. Y., October 9th, 1897.

461 JOHN A. DELEHANTY,
Attorney for Defendant.

To EDWARD WINSLOW PAIGE, Esq.,
Plaintiffs' Attorney,
Office and Post Office address:
44 Cedar Street, New York City.

EVIDENCE CLOSED.

This case contains all the evidence.

462

The Court at the request of the plaintiffs then found as fact as follows: 463

"The four wampums described in the complaint; "the four wampums exhibited by the defendant in "Chicago; the four wampums produced by the "defendant upon the trial, and the four wampums "referred to in the decision of the Court, are the "same, and are in the possession of the defend-"ant."

On reading and filing the annexed consent it is ordered, that the case on appeal as above printed be filed as the true and correct case on appeal herein. 464

FRANK H. HISCOCK,
J. S. C.

We consent to the entry of the above order.

JOHN A. DELEHANTY.
Attorney for defendant.

EDWARD WINSLOW PAIGE,
Attorney for plaintiffs.

465

466 SUPREME COURT.

THE ONONDAGA NATION; TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, SHO-HEH-DO-NAH, HA-ON-WEN-GO-WENLE, and JARVIS FARMER, Onondaga Indians; HO-DO-OH-GO-AH, a Seneca Indian; HA-JA-AH-GWYSH, a Cayuga Indian, and the UNIVERSITY OF THE STATE OF NEW YORK,
467 plaintiffs,

against

JOHN BOYD THACHER,
defendant.

SIRS:

You will take notice that each plaintiff separately appeals to the Appellate Division of the Supreme Court for the Fourth Department from the
468 judgment entered in this action in Onondaga County Clerk's Office on the twenty-sixth day of December, 1899.

Yours very truly,
EDWARD WINSLOW PAIGE,
Attorney for plaintiffs.

To the honorable
JOHN A. DELEHANTY,
Attorney for defendant; and
The CLERK OF ONONDAGA COUNTY.

Waiver of Certification.

469

It is hereby stipulated that the appeal book, as above printed, contains true and correct copies of the notice of appeal herein to the Appellate Division, the judgment appealed from, the exceptions thereto, and of all the papers on which the Court below acted in making such ~~decree~~ judgment, on file in the office of the ~~Surrogate~~ Clerk of the County of ~~Westchester~~ Onondaga, and all the evidence taken and proceedings had upon the hearings herein, and of the case.

Certification hereof, in pursuance of Section 1353 of the Code of Civil Procedure, or otherwise, is hereby waived. 470

Dated Albany, 30 December, 1899.

JOHN A. DELEHANTY,
Attorney for defendant.

EDWARD WINSLOW PAIGE,
Attorney for plaintiffs.

471

THE ONONDAGA NATION *et al.*

against

JOHN BOYD THACHER.

Action to recover the possession of four wampum belts obtained by defendant through intermediate transfers from an Onondaga Indian.

473

E. W. PAIGE, for Plaintiffs.

JOHN A. DELEHANTY, for Defendant.

HISCOCK, *J.*:

The object of this action in brief is to have it adjudicated that the Indian League of Five Nations, composed of the Onondagas, Oneidas, Mohawks, Senecas and Cayugas, and afterwards made Six Nations by the addition of the Tuscaroras, used wampum belts to commemorate important events; that these belts by an association of ideas with them served the purpose of a history; that there
474 was an official of the League known as wampum keeper, whose duty it was to preserve the wampums, and upon proper occasions to expound their meaning and significance; that the Onondaga Indian, from whom defendant's assignors obtained the wampums in suit, had possession of them as such wampum keeper; that such sale by him was unauthorized, and that the property having a peculiar and special interest not to be measured by money damages, this action may be maintained in behalf of the Indian Nations in question to in effect recover its possession.

The right of plaintiffs to maintain this action is

questioned upon many grounds, involving both the merits of their claim and technical features of the action. 475

It was not claimed upon the trial, and is not now by defendant's brief, that equity has not jurisdiction of such an action and might not upon proper facts render a judgment such as is sought here. And the authorities cited by plaintiffs' counsel sustain his contention that it has such jurisdiction.

Duke of Somerset, 2 Peere Wms., 380.
Pusey *vs.* Pusey, 1 Vern., 273.
Fells *vs.* Read, 3 Ves., 70.
Lloyd *vs.* Learing, 6 Ves., 773.
Earl of Macclesfield *vs.* Davies, 3 Ves. & B., 16. 476

It is, however, urged that a demand upon defendant for the delivery of the belts was a necessary prerequisite to the action. I think that view was right in this case and that no sufficient one was proved. In fact, my attention is called to none at all, and the argument of plaintiffs' counsel is that none was necessary.

Defendant purchased the belts for five hundred dollars, which certainly, in view of the prices paid by others for these and other ones, was not suspiciously low. There is nothing to impugn his good faith. On the contrary, he was induced by others, as a matter of public spirit, to make this purchase with his own funds to help the Indian Exhibit at Chicago, there being no public moneys available for that purpose. Accepting for the present plaintiff's version of the character of these belts and of their original custody by the Indians who sold them, defendant was not, in my opinion, chargeable with notice or knowledge thereof at the time of his purchase. He was a purchaser in good faith and for value and was entitled to the benefit of a demand before action was brought against 477

478 him. A prior demand might not be essential to some of the details of plaintiffs' prayer for relief, as that defendant be restrained from defacing or parting with the property, &c. But the substantial object of the action is to take from defendant the possession of the wampums.

None of the cases cited by plaintiffs' counsel are authority for dispensing with such demand.

In Pattison *vs.* Skillman, 34 N. J. Eq., 344, although that question was not discussed, it would appear that there had been a refusal to deliver the chattels after demand.

The same is true of Fells *vs.* Read, 3 Ves., 70.

479 And in many of the other cases cited by him it appears that the detention of the property sought was wrongful in its very inception, and in known defiance of the rights of those seeking it.

I see no renson why defendant in this action should not have the benefit of the same preliminary opportunity to voluntarily relinquish his possession after notice of plaintiffs' claims, to which he would have been entitled before an action at law.

Hovey *vs.* Bromley, 85 Hun, 540.

Gillett *vs.* Roberts, 57 N. Y., 28.

In addition to the plaintiffs originally named in
480 this action by order made upon the trial the following persons were brought in and by appropriate allegations made parties plaintiff, viz.: Sho-heh-do-nah, an Onandaga Indian; Ha-on-wengo-wenle, an Onondaga Indian; Jarvis Farmer, an Onondaga Indian; Ho-do-eh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian; and the University of the State of New York.

It is insisted that none of the plaintiffs, original or subsequently added, can maintain this action. So far as the University of the State of New York is concerned, this objection is addressed to its want of legal interest. In the case of the

others it is based upon an alleged lack of legal 481
status to maintain any suit in this Court.

Evidence was given of a purported transfer by certain alleged chiefs of the Onondaga Indians to the University of the State of New York of the wampuns in suit; also of certain proceedings upon the part of the same chiefs which purported to "raise up" such University as "wampum keeper," and thereby entitle it to the possession of the wampums.

The complaint is not framed for a recovery upon the theory of a sale of the wampums to said plaintiff. In fact such claim would be diametrically 482
opposed to the plaintiffs' theory of the action that such wampums were the property of the Six Nations and could not be bargained and sold. Neither has plaintiffs' counsel by his closing brief and argument at all pressed the other branch of the claim that said University had become interested as wampum keeper. Independant of defendant's contention that such duties would be quite outside of those for which said University is supposed to have been organized, there seems to me to be difficulties with the claim from the Indians' standpoint. In the light of all the traditions, not to say romance, which have been woven into this subject 483
of Indian history, the idea seems somewhat incongruous of the University of the State of New York as the final successor in a line of red-skinned and pagan wampum keepers reaching back beyond the days when Hendrik Hudson sailed up the North River. Tested also by the somewhat rigid and entirely unromantic rules of legal title, I am unable to find sufficient proof that the proceedings taken by the Onondaga Indians were sufficient to confer the position of wampum keeper, assuming that there is such an one.

This view limits the right of recovery, if any, to

484 the Indian plaintiffs, and leads to a consideration of the objections urged by defendant to the right of an Indian tribe or of individual Indians to sue.

It is not desirable to review at length all of the reasons and arguments which have been or may be advanced in favor of or against the right of a tribe or nation of Indians, as the Onondaga Nation, to bring suit. The weight of authority in this State seems to decisively settle the question in the negative.

In the first place, the Statutes of the State as collected and embodied in the Indian Law of 1892,
485 both by general provisions and by those specially relating to the Onondaga Indians, indicate the intent upon the part of the State to treat the Indians as wards, and, except when otherwise specially provided, to trust the protection of their rights as tribes or nations to its agents rather than to proceedings by themselves. Where it was deemed wise to have tribal action in relation to tribal rights, as in the case of trespasses upon tribal lands, and in the case of certain rights in "oil spring reservations," express authority is given for the prosecution of suits in the name of the "nation" interested. (Sections 11 and 55, Indian Law.) There
486 was, of course, no necessity for this if the general power was possessed by the different tribes or nations of Indians as such to bring suits.

In addition to this reasoning the subject is settled by direct adjudication.

Strong *et al. vs.* Waterman, 11 Paige, 607.

Senaca Nation *vs.* Christie, 126 N. Y., 122.

Montauk Tribe *vs.* Long Island R.R., 28 App. Div. 470.

But it is urged by plaintiff's counsel that even though an action may not be maintained by and in

the name of a nation or a tribe, individual Indians 487
have capacity to sue. In this I think he is correct. It is so indicated if not authoritatively adjudicated in

Strong *vs.* Waterman, 11 Paige, 607.
Montauk Tribe *vs.* L. I. R.R. Co., 28 App. Div., 470.
Crouse *vs.* N. Y. P. & O. R.R. Co., 49 Hun, 576.

Nor can I see any other reasonable interpretation of the Indian Law than that, except as otherwise expressly provided, an Indian has access to, and is subject to the juridiction of our Courts. 488
Section 2 of that statute provides that "An Indian shall be liable on his contracts not prohibited by law; and a native Indian may take, hold and convey real property the same as a citizen," &c. Section 5 provides that "Any demand or right of action, jurisdiction of which is not conferred upon a peacemaker's court, may be prosecuted and enforced in any court of the State the same as if all the parties thereto were citizens."

The disposition of these somewhat preliminary questions leads to a consideration of the substantial issue in the case. Are the wampum belts now in the possession of the defendant of the 489
character claimed by plaintiffs? Are they historical emblems constituting part of the annals of the Iroquois League formed long before the Revolutionary War and still existing? And have they been transferred by some wampum keeper in violation of his duties and obligations?

There is involved at the outset in the determination of this issue the consideration of the competency of a large portion of the evidence offered by plaintiffs. This consisted of extracts from Morgan's "League of the Iroquois," published in 1851, and Clark's "History of Onondaga."

490 The first of these works, so far as disclosed by the evidence, was a general history of the League and of the Indian nations or tribes composing the same, their government, laws, customs, &c. The second, although appearing by its title to be a history of one of these nations, did, as a matter of fact, as appears by the extracts offered, treat of matters pertaining to the entire confederation of the Five, or as it afterwards became, the Six Nations.

Some of these extracts offered in evidence relate to ancient times and are manifestly based upon
491 hearsay and tradition. Some, as those in reference to Os-sa-hin-ta and his associate chiefs of the Onondagas, relate to alleged facts of a comparatively recent date. Some, as those descriptive of the various wampums and of the bag in which they were kept, are apparently based upon the personal observation of the historian and do not relate to facts of general historical interest and repute.

It was conceded upon the trial that each of these historians was dead, and no question was raised as to their character and reliability as such.

I think that the extracts from Morgan's history, and those of the first class from Clark's, were com-
492 petent evidence.

Greenleaf on Evidence, Secs. 139 and 497 (16th ed.).

Bogardus *vs.* Trinity Church, 4 Sandf. Ch. R., 675.

McKinnon *vs.* Bliss, 21 N. Y., 206.

Crill *vs.* City of Rome, 47 How. Pr., 398.

Considering this and the other evidence before me, I am able to agree without much difficulty with part of plaintiffs' theory in regard to these wampums. While the subject necessarily rests upon hearsay and is pretty largely enveloped in tradition and legends, I think it is reasonable to find that

these wampums were used by the Indians as a 493
means of commemorating and preserving the memory of important events, such as the making of treaties, the coming of the white man, etc., and that while the League of the Iroquois was in active existence, the nations composing it employed this method of preserving the history of the events which they conceived to be of importance. It is reasonable also to assume that some one of their number was elevated to the position and duty of keeping these various wampums, and of expounding them and emphasizing their meaning and significance upon ceremonial occasions. All of the
historians and the students of Indian history who 494
have been sworn in this case seem to agree upon this custom or method of the Indian nations in question. The evidence also would seem to fairly permit the finding that the wampums in question here were part of those made and used and possessed by the League in question. As I have said, there is much of tradition and legend involved in going to this extent, but whatever there is of it seems to have been accepted as history by those who have studied the subject. This, however, is as far as I feel willing to go. I am not willing to
hold that on February 10, 1891, this old League, 495
composed first of the Five, and then of the Six, Nations had any active or actual existence, or that Thomas Webster, the Onondaga Indian from whom these wampums were obtained by the defendant's assignor, was at that date wampum-keeper for those nations, and that he held these wampums as such and that in violation of his duties sold them; or that there is any such identity and community of interest between these individual plaintiffs and members of Six Nations in having these wampums preserved and restored to some custodian, as per-

496 mits the maintenance of this action. The evidence seems altogether too shadowy to sustain these propositions.

"I am rather led to the conclusion that at and long before the time mentioned, the League, to which these wampums are said to have belonged, had been dissolved; that we had come to associate even its name with a period long gone by; that the nations which composed it had become separated and, to a large extent, scattered and dispersed and wards of the Government, and that these wampums are curiosities and relics of a time and con-
497 dition and confederation which has ceased to exist, and that Webster had possession of them as one who had gathered them as such relics. The evidence given with reference to the Onondaga Nation, and with reference to Webster, indicates to my mind that they had ceased to treat or regard them as the property of the Onondaga Nation, much less as that of the Iroquois League, and that there had been long acquiescence in Webster's possession of them as an individual owner.

"Independent of their original significance and use, they are relics of interest to at least the people of this State. They are even more than that.
498 They are to us bits and items in the history of the Indians and of a once powerful confederation. As such, the public have an interest in their preservation. But in my opinion that must rest upon the valuntary action of the defendant rather than be enforced by a judgment in this action.

"The conclusions reached upon the points considered render it unnecessary to consider the further defense interposed of the statute of limitations.

"Findings and judgment may be prepared dismissing plaintiff's complaint with costs, and be settled upon five days' notice."

At a Term of the Appellate Division of the Supreme Court, held in and for the Fourth Judicial Department, at the City of Rochester, on the 24th day of July, 1900. 499

Present—Hon. WILLIAM H. ADAMS, Presiding Justice.
Hon. PETER B. MCLENNAN, Hon. ALFRED SPRING, Hon. PARDON C. WILLIAMS, Hon. FRANK C. LAUGHLIN, } Associate Justices.

THE ONONDAGA NATION, *et al.*, Appellants,

vs.

JOHN BOYD THACHER, Respondent.

Order of Affirmance on Appeal from Judgment. 500

The above-named plaintiffs and each of them separately, the appellants in this action, having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court entered in the office of the Clerk of the County of Onondaga on the 26th day of December, 1899, and the said appeal having been argued by Mr. Edward Winslow Paige, of counsel for the appellant, and by Mr. John Delehanty, of counsel for the respondent, and due deliberation having been had thereon, 501

It is hereby ordered and adjudged that the judgment so appealed from be and the same is hereby affirmed; and the respondent recover of the appellant the costs of this appeal.

Opinion by Williams, *J.* All concur, except McLennan, *J.*, not voting.

NEWELL C. FULTON, Clerk.

GEORGE J. YAECKEL, Clerk.

502 SUPREME COURT.

ONONDAGA COUNTY.

THE ONONDAGA NATION; University of the State of New York; Say-Ha-Que, an Onondaga Indian; Hos-Hay-Qua, an Onondaga Indian; Sho-Heh-Do-Nah, an Onondaga Indian; Ha-On-Wengo-Wenle, an Onondaga Indian; Jarvis Farmer, an
503 Onondaga Indian; Ho-Do-Oh-Go-Ah, a Seneca Indian; and Ha-Ja-Ah-Gwysh, a Cayuga Indian,

Plaintiffs,

against

JOHN BOYD THACHER,

Defendant.

Judgment of Affirmance.

504 The appeal from the judgment entered in the above-entitled action on the 26th day of December, 1899, in favor of the defendant and against the plaintiffs, dismissing the complaint of said plaintiffs upon the merits and adjudging that the above-named defendant recover of the above-named plaintiffs the sum of One hundred and sixty-nine Dollars and twenty-eight cents ($169.28), costs and disbursements, as adjusted, and said appeal having come on to be heard and having been heard and decided, and the Appellate Division having by an order duly made and entered herein and filed in the office of the Clerk of said Appellate Division on the day of July, 1900, ordered that the

said judgment so appealed from be in all things affirmed, with the costs of said appeal to said defendant-respondent, 505

Now, on reading and filing a certified copy of said order and the original case upon which said appeal was heard, and upon motion of John A. Delehanty, attorney for the defendant herein, it is

Adjudged, that said judgment entered in the above-entitled action in the office of the Clerk of the County of Onondaga on the 26th day of December, 1899, be and the same hereby is in all things affirmed.

And it is further adjudged that the above-named defendant recover from the above-named plaintiffs the sum of $157.45, his costs and disbursements on said appeal and have execution therefor. 506

GEORGE J. YAECKEL,
Clerk.

Entered in the office of the Clerk of Onondaga County, 7 August, 1900.

SUPREME COURT, APPELLATE DIVISION,

FOURTH JUDICIAL DEPARTMENT. 507

Clerk's Office, Rochester, N. Y.

I, NEWELL C. FULTON, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that the annexed order is a true copy of the original now on file in this office, and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Court, at the City of Rochester, this 13th day of September, 1900.

NEWELL C. FULTON,
[SEAL.] Clerk.

508 At a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Fourth Judicial Department, at the City of Rochester, on the 24th day of July, 1900.

Present—Hon. WILLIAM H. ADAMS,
Presiding Justice.
" " PETER B. MCLENNAN
" " ALFRED SPRING,
" " PARDON C. WILLIAMS,
" " FRANK C. LAUGHLIN,
509 Associate Justices.

THE ONONDAGA NATION, TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all the Ho-do-no-sau-nee, and others,
Plaintiffs,

against

JOHN BOYD THACHER,
510 Defendant.

On reading and filing a transcript of the Minutes of the trial herein made at the Trial Term by the Official Stenographer of the Court, whereby it appears that a motion was duly made by and on behalf of the above-named plaintiffs and duly granted by the Court making certain parties other than those above named and now appearing in the record additional parties plaintiff herein and amending the Summons and Complaint accordingly without further service of the same, and

otherwise amending said Complaint by the insertion of a certain allegation more particular referred to in the order of the Court thereupon duly entered; 511

And it further appearing by said Minutes that the application of the plaintiffs so made as aforesaid was granted and the authority to so amend said Summons and Complaint was given upon the express condition that the defendant be allowed to amend his answer without further service of the same by inserting therein a denial of such additional allegations of the Complaint as were authorized by such amendment, and, also, by a denial of such allegations of the amended Complaint relating to the said additional plaintiffs appearing in the original Complaint as were denied in the original answer and by making such affirmative allegations concerning such additional plaintiffs as were made in the original answer concerning the original plaintiffs above named, and also by pleading the six years' Statute of Limitations so far as all the plaintiffs are concerned; 512

Now, on motion of John A. Delehanty, attorney for the defendant, it is

Ordered, that the order heretofore granted herein relating to such application be and the same hereby is corrected and amended *nunc pro tunc* by directing that the answer of the defendant be deemed amended without further service of the same by inserting therein allegations relating to the Complaint as amended, containing general and specific denials of the same description as are contained in the original answer relating to the corresponding allegations of the original Complaint, by adding an allegation that the plaintiffs now named as parties to this action, including the plaintiffs brought in by said order of the Court, have no real interest in this action or the subject-matter thereof; that no authority was ever given by those plaintiffs 513

514 to commence the action, and that neither of said plaintiffs had or has the legal capacity to sue, or the legal capacity to bring and maintain this action; and by adding to said answer the allegation, viz., that no part of the alleged cause of action accrued within six years prior to the commencement thereof.

And be it further ordered, that said answer be deemed amended in all the above respects without further service of the same *nunc pro tunc* with the same force and effect as if said allegations above mentioned were actually inserted therein, and that
515 the record be changed so as to conform with said several amendments.

McLennan, *J.*, not voting.

[L. S.] NEWELL C. FULLER,
Clerk.

Endorsed: "Filed Sept. 13, 1900."

516

APPELLATE DIVISION OF THE SUPREME COURT. 107

FOURTH JUDICIAL DEPARTMENT.

THE ONONDAGA NATION; University of the State of New York; Say-Ha-Que, an Onondaga Indian; Hoo-Hay-Que, an Onondaga Indian; Sho-Heh-Do-Nah, an Onondaga Indian; Ha-On-Wongo-Wenie, an Onondaga Indian; Jarvis Farmer, an Onondaga Indian; Ho-De-Oh-Go-Ah, a Seneca Indian; and Ha-Je-Ah-Gwyah, a Cayuga Indian, Plaintiffs-Appellants, 108

against

JOHN BOYD THACHER, Defendant-Respondent.

SIR:

You will please take notice that each of the above-named plaintiffs-appellants hereby separately appeals to the Court of Appeals of the State of New York from the judgment of the Appellate Division of the Supreme Court, Fourth Judicial Department herein, entered in the office of the Clerk of Onondaga County, on the 7th day of August, 1900, and from each and every part thereof. 109

Dated N. Y., August 10th, 1900.

Yours, &c.,
EDWARD WELLOW PAGE,
Atty. for Appellants.

To JOHN A. DELEHANTY, Esq.,
Attorney for Respondent, and
The Clerk of the Appellate Division of the Supreme Court, Fourth Judicial Department.
Clerk of Onondaga County.

520 It is hereby stipulated and agreed that the foregoing papers are true and correct copies of the Notice of Appeal, the judgment of affirmance of the Appellate Division, Fourth Department, and all papers on which the Court below acted in making said judgment.

Certification hereof in pursuance to the Code of Civil Procedure is hereby expressly waived.

Dated August tenth, 1900.

JOHN A. DELEHANTY,
Attorney for Respondent.

521

EDWARD WINSLOW PAIGE,
Attorney for Appellants.

522

Opinion Appellate Division.

523

WILLIAMS, *J.*: The action was brought to recover possession of four wampum belts, and for equitable relief in reference thereto. The defendant claimed he acquired title to the belts from Rev. Dr. Oliver Crane March 24, 1893; that Dr. Crane acquired title thereto from Henry B. Carrington, of the United States army, in the month of July, 1892; and that Carrington acquired title thereto from Thomas Webster, a member of the Onondaga tribe of Indians, living on the Onondaga reservation, in the state of New York, on the 10th of February, 1891. The claim made by the plaintiffs was that, 524 at the time Webster assumed to sell the belts to Carrington, they were not the property of Webster, and he had no power to sell or transfer title thereto, but that they belonged to a confederacy of Iroquois Indians. The trial court dismissed the complaint, holding that plaintiffs had no right to maintain such an action, and that the defendant had good title to the belts.

As to the right of the plaintiffs to maintain such an action, we must hold, since the decision by the court of appeals of Johnson *v.* Railroad Co., 162 N. Y. 462, 56 N. E. 992, that the Indian plaintiffs 525 cannot maintain the action. That was an action to recover real property (ejectment). This is one to recover personal property,—in form, in equity. But the principle is the same in both actions. It is said by appellants that this question was not properly raised as to the Indians brought in by the order of December 20, 1898. It seems to us that the real intention was to make the same answer to the additional Indian plaintiffs as was made to the original ones, and the action was apparently tried upon this theory. The bringing in of these parties was a matter of favor to the plaintiffs, and they

526 should not be permitted to take advantage of any technical objection like this one. If necessary to correct the answer or order, it should be done by this court, under section 723 of the Code of Civil Procedure. More than this, the plaintiffs have given evidence that all title which the Indians had to these wampum belts has been transferred to the University of the State of New York. The only plaintiff which can by any possibility maintain this action, therefore, is the University of the State of New York. It undoubtedly has power to bring actions generally. It is a corporation having capacity to sue and be sued. It has a state museum
527 under chapter 378 of the Laws of 1892, and an Indian section thereof, under chapter 586 of the Laws of 1896; and it has power under the statute to acquire title to such articles as these wampum belts, and to recover possession thereof by actions in the courts like the present one. It seems to us ridiculous, however, to say that it could be constituted a wampum-keeper of any Indian tribe or confederacy. It was not an Indian, and had no statutory right or power to be constituted an Indian or wampum-keeper, of the kind indicated by the evidence given in the case. This claim is not
528 worthy of any serious consideration. The only question involved in the action is one of title to the wampum belts,—which has superior title, the University of the State of New York or the defendant. The source of the defendant's title has already been referred to. His chain of title commenced with Thomas Webster, an Onondaga Indian, February 10, 1891. The chain from that point is complete to the defendant. The University of the State of New York claims title under a bill of sale made pursuant to a resolution adopted by a meeting of the so-called Onondaga Nation of Indians March 26, 1898. Two resolutions were passed at the same

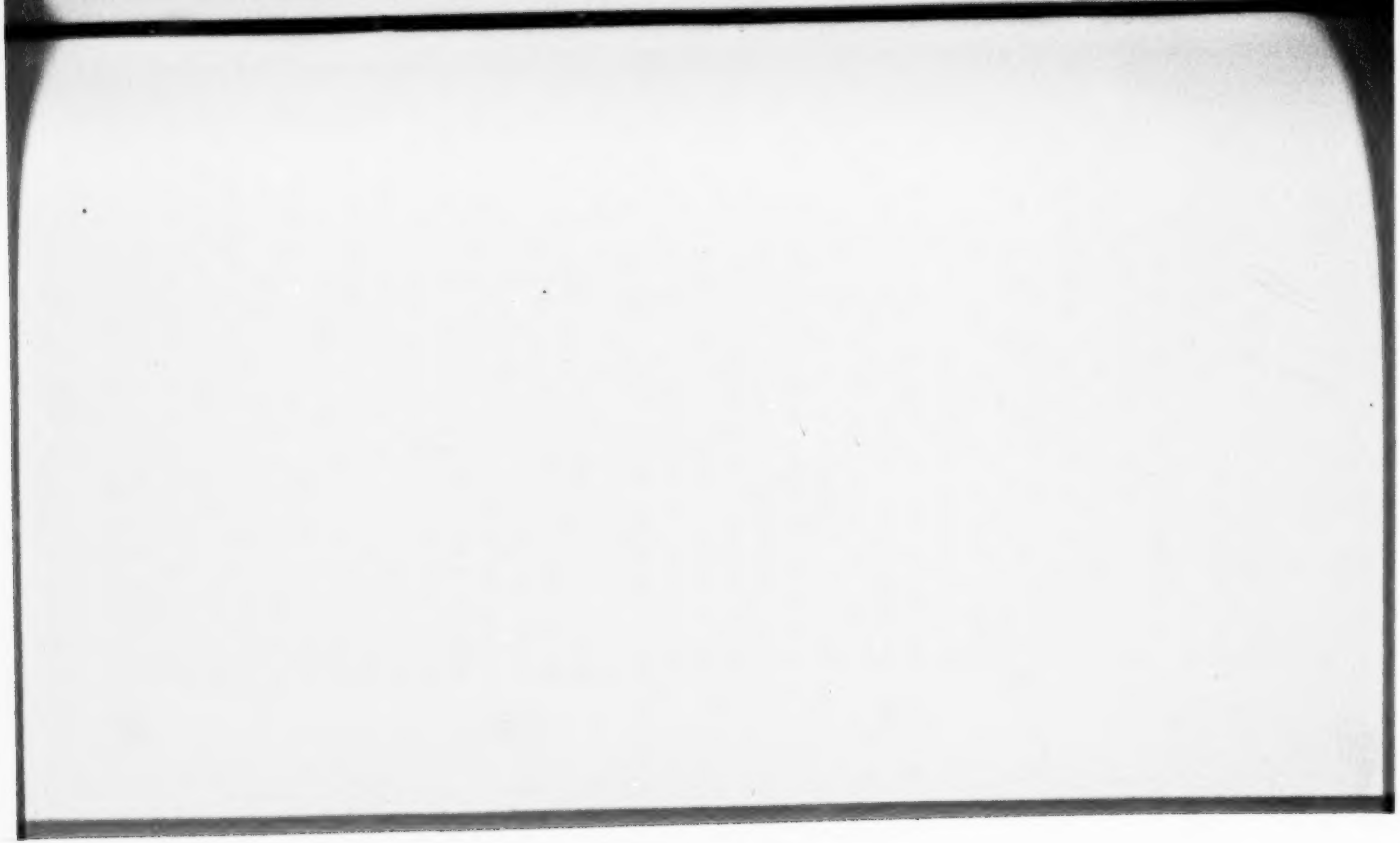
meeting—one, electing the University of the State 529
of New York wampum keeper; and the other, following the first, that the Onondaga Nation sell to the University of the State of New York all wampums, for $500, and that the sachems and chiefs present all execute a bill of sale for the nation. Then the transfer was, in form, that the Onondaga Nation sell, assign, transfer, and set over to the University of the State of New York all wampum, in belts, strings, or otherwise, of which it ever had or was entitled to possession, and all its rights, title and interest to any and all wampums anywhere, in consideration of $500; and it made the 530
University of the State of New York attorney of the Onondaga Nation and its sachems and chiefs present, at its (the attorney's) own cost and expense to recover the possession of the said wampum by suit or otherwise. The question arises, as to this transfer, whether the parties assuming to make the same had any title to the wampum belts in question, which they transferred to the University of the State of New York. They had no possession of the belts, at the time of making the transfer, which could be said to be *prima facie* evidence of title, as in the case of the transfer by Webster. He had possession of the belts in 1891, and de- 531
livered them, with a transfer of such title as he had, more than seven years before the transfer to the University of the State of New York. The trial court, upon evidence apparently satisfactory to itself, found the early existence of the Indian confederacy; that it had wampum belts; that the care and custody thereof were intrusted to the Onondaga Nation, which appointed one of its members wampum keeper; and that the belts in question were at one time a portion of the belts belonging to the confederacy. But it found that this confederacy many years prior to February 10,

532 1891, the date of the transfer by Webster, was dissolved, and thereafter had no existence, the use of the belts had become obselete, and they nothing more than curiosities and relics of a time, condition, and confederation which had ceased to exist, and that the office of wampum keeper had been abrogated; that Webster was never a wampum keeper, but in some way became possessed of and the owner of the belts in question long before he made the transfer thereof in 1891. While we should not be prepared to give our assent to all these findings, upon the evidence, as original propo-
533 sitions, yet we need not go into the details of the conclusions arrived at, inasmuch as the ownership of the belts by Webster is found upon adequate evidence, and that defeats all claim of title thereto by the University of the State of New York under the pretended transfer to it in 1898. There is proof of Webster's ownership of the belts, in the fact of his possession thereof, independent of any proof of his having been a wampum keeper, for years prior to his transfer thereof in 1891. There is no satisfactory proof of any ownership by the parties making the transfer of 1898, or authority to act for the owners of the belts. The defendant has
534 the possession of the belts under the Webster transfer in 1891, and the University of the State of New York must show a better title than defendant's before the court can award the belts to it. While the proof of any authority to represent the confederacy of Indians or the Onondaga Nation as the alleged owners of the belts is unsatisfactory how can it be said that they had authority to sell and transfer the belts for a money consideration of $500 to the University of the State of New York? If there were any good purpose to be served, by allowing the Indians themselves to regain possession of the belts, we might struggle

to reach such a result; but where the controversy 535
is between other parties, who claim to have purchased the belts and paid their money therefor, then all question of sentiment is gone, and it is a mere question of title, to be determined upon the evidence, and we are unable to see any reason why we should reverse the trial court in its finding that Webster had good title to the belts when he made his transfer in 1891, or why we should not at least conclude ourselves that the University of the State of New York has failed satisfactorily to establish any better title under the transfer of 1898 than the defendant holds under his chain of title, 536
which began in the Webster transfer of 1891. After an extended examination of the record, we conclude that the judgment appealed from should be affirmed, with costs.

Judgment affirmed, with costs. All concur, except McLennan, *J.*, not voting.

537



In the Court of Appeals of the State of New York, Fourth Department.

THE ONONDAGA NATION; TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, Sho-heh-do-nah, Ha-on-wen-go-wenle, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs,

against

JOHN BOYD THACHER, Defendant,

Motion.

As-que-sent-wah (Edward Winslow Paige), of counsel.

You will take notice that on the eleventh day of November one thousand nine hundred and one I will present to the court of appeals at the opening of the court, papers of which the annexed are copies, and will pray for the direction of the court.

AS-QUE-SENT-WAH
(EDWARD WINSLOW PAIGE).

SCHENECTADY, *ss*:

Edward Winslow Paige, being duly sworn, says:—
On the twenty-third of the last March, I received in New York the following letter with the following enclosure:

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative, "Home education,	College, State library,	High school, State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor.

James Russell Parsons, Jr., secretary of university, director college and high-school departments; Henry I. Knickerbocker, head clerk.

"Dictated in reply to yours of V.

"REGENTS' OFFICE,
"ALBANY, N. Y., 22 *Mr.*, 1901.

"Edward Winslow Paige, New York.

"DEAR MR. PAIGE: The inclosed is a copy of the action taken by "the regents at their meeting held March 14, on the motion of the "secretary of state.

"Very truly yours,

J. R. PARSONS, JR."

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor; James Russell Parsons, Jr., secretary.

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"REGENTS' OFFICE,
"ALBANY, N. Y., 21 *March*, 1901.

"At a legal meeting of the regents of the University of the State of "New York, held at their office in the capitol in Albany, March 14, "1901, the following action was taken:

"*Extracts from Official Minutes.*

"*Voted*, That in the case of The Onondaga Nation *vs.* John Boyd "Thacher, the attorney for the plaintiff be requested to state to the "court of appeals that he was under a misapprehension in supposing "that he had received authority from the regents to make the Uni-"versity of the State of New York a party to the suit.

"A true record.

"Attest: J. R. PARSONS, JR., *Secretary.*"

Other facts in regard to this matter, some of which I then knew and the others of which I have since ascertained, are as follows:

At its March meeting of 1898, which was upon the twenty-second of that March, the following was, as I am informed and believe, done by the regents, as appears by their minutes:

"*State Museum.*

"Wampum.—The secretary reported the unanimous election by "the Indian council of chiefs, of the university as permanent wam-"pum-keeper for all wampums of the Five nations and Six nations.

"*Voted*, That the matter be referred to the museum committee with "power to act in securing the wampums.

"*Action of Onondaga Chiefs*

"At a council of the Onondaga nation held at the house of Daniel "La Forte in Onondaga on the 26th day of February 1898 held "pursuant to call and notice given to all the chiefs.

"*Present*

"Te-hes-ha	Daniel La Forte, *president*
"Sa-ha-que	Baptist Thomas, *treasurer*
"Ah-wa-ga-yat	Orris Farmer, *secretary of the nation*

"Ha-say-gwa-e-say	Jacob Skenandoah	*Sachems and chiefs*
"So-day-qua-scum	Asa Wheelbarrow	
"Sa-da-qua-seh	Jacob Bigbear	
"Ha-e-ho	Levi Webster	
"O-gayis-qua	John Farmer	
"Ho-yo-ne-a-ne	William Webster	
"Ga-na-ha-guh-yat	Wallace Carpenter	
"Ha-wen-jo-wah-e	Enoch Skenandoah	

"The following resolutions were unanimously adopted:

"*Resolved*, That the University of the State of New York be and "it hereby is elected wampum-keeper of the Onondaga nation, with "full power and it shall be its duty to get possession of and safely "keep forever all wampums of the Onondaga nation and the Five "nations and Six nations and each of them.

"Whereupon the University of the State of New York was unan-"imously elected to the office of wampum-keeper."

It appears by the constitution of the Onondaga nation that eight chiefs make a quorum (Appeal Book, fol. 449).

On the fourth of March 1898 I received from Mr. Richmond the honorary curator of the Indian museum, a letter, of which the following is a copy:

"MARCH 3, '98.

"DEAR MR. PAIGE: I have your favor of the 2nd inst. I will "see Mr. Dewey as soon as I can, after receiving copies of the papers, "and will see if I can get my pay—have them pass a resolution as "you requested and get Mr. Dewey's authority for us to proceed "against the Pierce woman for the wampum, and any others we "may find. I will also have him get a certified copy by the clerk "of the senate, of the book you want."

This letter was of course sent before the above action of the regents.

On the twenty-fourth of May 1898 I received from Mr. Richmond a letter telling me of the receipt by him of the two large wampums which are depicted uppermost on the picture, facing page 104 of the Appeal Book. I have since been informed that this was accomplished with the action of the chiefs under the above resolution. The university already had in its possession the remaining five wampums—besides those in Mr. Thacher's possession—which General Clark saw in 1879 (Appeal Book, fols. 163–169).

In June a regents' convocation was held in Albany at which were present Indians of all the Six nations, and by the direction of Onondaga chiefs I presented publicly to the regents the above resolution of the chiefs—the original paper—and the wampums, and there was a public acceptance by the chancellor in the following words:

"CHANCELLOR UPSON: As chancellor of the university permit me "to accept this gift."

(Regents' Bulletin 45, of December, 1898, p. 430.)

On the twenty-seventh March, 1899, the legislature passed an act which contained the following:

"Chap. 153, Laws 1899.

"An act to collect and preserve from loss or injury any and all "wampums which the Onondaga nation of Indians, or its wampum-"keeper, or any of the Ho-do-no-sau-nee, otherwise known as the "Five nations, or the Six nations, or the Iroquois, is entitled to "possess.

"SECTION 1. The University of the State of New York, which was "duly elected to the office of wampum-keeper by the Onondaga na-"tion, on February twenty-sixth, eighteen hundred and ninety-eight, "and which by unanimous action of its regents on March twenty-"second, eighteen hundred and ninety-eight, accepted such election "as authorized to do by law, and which accepted the custody of the "wampums as formally transferred to the chancellor as part of the "exercises and with the unanimous approval, both of the election "and transfer, by the council of the Five nations, held in the senate "chamber of the capitol at Albany on June twenty-second, eighteen "hundred and ninety-eight, by duly chosen representatives of all the "original nations of the Ho-de-no-sau-nee, shall hereafter be recog-"nized in all courts and places, as having every power which has "ever, at any time, been exercised by any wampum-keeper of the "Onondaga nation, or of any of the Ho-de-no-sau-nee, otherwise "known as the Five nations, or the Six nations, or the Iroquois, and "shall keep such wampums in a fire-proof building, as public "records, forever."

It is true that this act also contained the following:

"§ 2. The provisions of this act shall not apply to the subject-"matter of any litigation now pend- in any court of this State."

and that at the time of its passage this action was pending.

In December 1898, at the opening of the trial of the case, I brought in the university (Appeal Book, fol. 81); Mr. Richmond being present and afterwards a witness on the trial (Appeal Book, fol. 442). I say nothing of any conversations I have had with Mr. Richmond, since he died the following summer.

The facts in regard to this trial were widely published in the newspapers at the time, including the fact that the university was a party—the newspapers of New York, Albany and Syracuse.

In November of 1900, Mr. Justice Hiscock decided the case and again the facts were widely published in the newspapers, and, I am informed, telegraphed through the Associated Press. I immediately took an appeal.

On the fourteenth of January, 1900, I received from Mr. Parsons, the secretary of the regents, the following letter, to which I sent the following reply:

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor.

James Russell Parsons, Jr., secretary of university, director college and high-school departments; Henry I. Knickerbocker, head clerk.

"Dictated in reply to yours of V.

"(Copy.)

"REGENTS' OFFICE, ALBANY, N. Y., *Ja.*, '00.

"Hon. E. Winslow Paige, Schenectady, N. Y.

"DEAR MR. PAIGE: Under the adverse decision in regard to the "suit over the wampum belts in which you introduced the name of "the university as a party to the suit, is there anything that should "be done by the regents? As I understand it, you have taken the "whole charge of this matter and no costs were authorized by us, "and we have simply to leave it entirely in your hands. Is this "correct?

"Yours very truly, J. R. PARSONS, JR.,
"*Acting Secretary.*

"If any action by the regents is deemed necessary, I beg that you "will defer the matter till after February 15 when the regents are "to hold their next meeting."

"DEAR SIR: Nothing whatever is to be done by the regents in "regard to the wampum case. Your understanding is entirely cor-"rect. I argue the case next week and when I get to the court of "appeals I mean to win it.

"Very truly, EDWARD WINSLOW PAIGE.

"J. R. Parsons, Jr.
"Wednesday."

In March the appeal was argued before the appellate division and again the facts were widely published in the newspapers, including all the principal New York papers and the Albany and Rochester papers.

In the July of 1900 the appeal was decided by the appellate division, and again the facts were widely published in the papers.

On the tenth of August 1900 I received the following letter from Doctor Merrill, then and still director.

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor; James Russell Parsons, Jr., secretary.

"Established 1843.

"New York State museum.

"Frederick J. H. Merrill, director and State geologist; John M. Clarke, State paleontologist; Charles H. Peck, State botanist; Ephraim Porter Felt, State entomologist.

"Dictated in reply to yours of —.

"DIRECTOR'S OFFICE, GEOLOGICAL HALL,
"ALBANY, N. Y., 9 *Ag*,, 1900.

'Hon. E. W. Paige, 44 Cedar St., New York.

"DEAR SIR: Please let me know what is the present status of the "Thacher wampum case and whether you expect to carry the "litigation farther.

"Very truly yours, F. J. H. MERRILL, *Director.*"

To this I replied in substance that I meant to carry the case as far as it would go.

In September I received from Mr. Parsons a latter stating that Mr. Delehanty had called upon him to pay up the costs. I immediately had the necessary undertaking given and sent a copy to Mr. Parsons, who acknowledged its receipt.

On the fourth of the January of this year I received from Mr. Parsons a letter of which the following is a copy enclosing the copy of a letter to Mr. Thacher, which directly follows:

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor.

James Russell Parsons, Jr., secretary of university, director college and high-school departments; Henry I. Knickerbocker, head clerk.

"Dictated in reply to yours of V.

"(Copy.)

"REGENTS' OFFICE,
"ALBANY, N. Y., 2 *Ja.*, 1901.

"29 D.

"Edward Winslow Paige, New York.

"DEAR MR. PAIGE: At the last meeting of the regents the following resolution was adopted.

"*Voted*, That the matter of the wampum case be referred to the secretary of state, Regent T. Guilford Smith, Secretary Parsons and Dr. Merrill for information and for such farther action as may be necessary.

"This morning I am sending a copy of your letter to the members of the committee with a request for advice relative thereto. Inclosed herewith you will find copy of a letter which I wrote Mr. Thacher on the advice of a former committee of the regents to which the matter had been referred.

"I will communicate with you again as soon as I hear from the members of the committee.

"Very truly yours, J. B. PARSONS, JR."

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor.

James Russell Parsons, Jr., secretary of university, director college and high-school departments; Henry I. Knickerbocker, head clerk.

"Dictated in reply to yours of V.

"(Copy.)

"REGENTS' OFFICE, ALBANY, N. Y., 28 *S.*, 1900.

"Hon. John Boyd Thacher, Albany, N. Y.

"DEAR SIR: It does not appear from the minutes of the regents that they authorized the use of the name of the university as a party in the wampum suit, or that they in any way encouraged its prosecution. Mr. Dewey states that he never authorized or believed in this suit, but that he could not without serious prejudice against the friends of Mr. Edward Winslow Paige interfere or file a protest. Mr. Dewey adds that Mr. Paige insisted that the name of the university as a mere matter of form ought to be used, and that he (Mr. Paige) would take care of expenses and legal services. On the other hand Mr. Paige, whose attention was called to this matter by us August 29, 1900, writes that he never told anybody that the appearance of the university in the suit was a mere matter

"of form, and that he never had any conversation with Mr. Dewey "on the subject, though he says there are some letters. Mr. Paige "in a letter now in my possession states that he asked Mr. Rich- "mond to get authority to bring in the university as a party and "understood from him that he had done so. The Mr. Richmond "referred to by Mr. Paige was known as the honorary curator of the "Indian museum, but was not a salaried officer of the State. I "cannot find any evidence that he ever procured the authority "which Mr. Paige says he was to get. In fact, as far as I am able "to ascer- from the regents' minutes and from the correspondence, "neither the board of regents nor any member thereof ever charged "you with being in wrongful possession of the wampum belts, nor "*nor* did the board or any member thereof authorize this suit or "encourage its prosecution.

"Very truly yours,

"JAMES RUSSELL PARSONS, JR., *Secretary.*"

After this came the letter of the twenty-third of March, which has been given.

On the fifth of July of this year, I sent to the University of the State of New York a paper of which the following is a copy:

"To the University of the State of New York:

"On the twenty-second of March, one thousand eight hundred and "ninety-eight—the Onondaga nation—by the unanimous vote of "twelve of its chiefs in regular council assembled—eight being a "quorum—adopted a resolution in the following words:

"'*Resolved*, That the University of the State of New York be and "'it hereby is elected wampum-keeper of the Onondaga nation with "'full power and it shall be its duty to get possession of and safely "'keep forever all wampums of the Onondaga nation and the Five "'nations and Six nations and each of them.'

"And thereupon the University of the State of New York was by "the said council unanimously elected to the office of wampum- "keeper.

"On the twenty-second of March one thousand eight hundred and "ninety-eight the University of the State of New York by the unan- "imous vote of its regents accepted the above appointment and "office.

"About the eighth of May one thousand eight hundred and ninety- "eight by the action of the chiefs, the two large wampums known "as the 'constitution' and the 'wing or dust mat' were delivered "to the University of the State of New York—which now has in its "possession all of the official wampum records which were seen by "General Clark in the year one thousand eight hundred and seventy- "nine with the exception of the four wampum records now in the "possession of Mr. John Boyd Thacher.

"On the twenty-second of June, one thousand eight hundred and "ninety-eight, at a council held in the capitol in Albany at which "were present representatives of all the original Five nations, duly "accredited, the election of the University of the State of New York

"was ratified and the duty, the wampums and the office were for-
"mally and publicly accepted by the chancellor.

"Demand is therefore now hereby made upon the University of
"the State of New York 'to get possession of and safely keep for-
"'ever' the four wampums now in the possession of John Boyd
"Thacher either by the prosecution of the pending appeal in the
"suit now against him, or by the bringing of a new suit, and both.

"Very respectfully, AS-QUE-SENT-WAH.

"Fifth of July, one thousand nine hundred and one."

On the ninth of July I had a letter stating that this paper had been received.

EDWARD WINSLOW PAIGE.

Sworn before me this fourth day of November 1901
ALONZO P. STRONG,
Schenectady County Judge.

(Endorsed:) Filed Jan'y 16, 1902.

Opinion of the Court.

THE ONONDAGA NATION, ETC., ET AL., Appellants,
v.
JOHN BOYD THACHER, Respondent.

(Decided December 20, 1901.)

Edward Winslow Paige for appellants.
John A. Delehanty for respondent.

Per Curiam:

We think the judgment appealed from should be affirmed, upon the ground that neither the Onondaga nation, nor the individual Indians named as plaintiffs, had legal capacity to bring and maintain the action. (*Strong v. Waterman*, 11 Paige, 607; *Seneca Nation v. Christie*, 126 N. Y., 122; *Johnson v. Long Island R. R. Co.*, 162 *ib.* 462).

As to The University of the State of New York, one of the plaintiffs, the finding of fact by the trial judge "that the University of the State of New York never purchased any or either of the wampum belts mentioned and described in the complaint, and that said University of the State of New York never was selected or 'raised up' to the position or office of 'wampum-keeper,' and no official proceedings were ever begun on the part of any of the tribes of Indians which formerly composed the Iroquois confederacy for the purpose of conferring any such position or office upon said Univerversity of the State of New York, assuming that there is or was, at the time of said alleged proceedings, any such official position," is supported by evidence, and the judgment having been affirmed at the appellate division, it is, therefore, conclusive upon us.

The judgment should be affirmed, with costs.

Gray, O'Brien, Haight, Cullen and Werner, *JJ.*, concur; Parker, *Ch. J.*, absent; Landon, *J.*, not voting.

Judgment affirmed.

Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the twentieth day of December, in the year of our Lord one thousand nine hundred and one, before the judges of said court.

Witness the Honorable Alton B. Parker, chief judge, presiding.

WILLIAM H. SHANKLAND, *Clerk.*

Remittitur, Dec. 21, 1901.

THE ONONDAGA NATION and Others, Appellants,
against
JOHN BOYD THACHER, Respondent.

Be it remembered that on the 18th day of September in the year of our Lord one thousand nine hundred The Onondaga Nation, and others, the appellants in this action, came here into the court of appeals by Edward Winslow Paige their attorney and filed in the said court a notice of appeal and return thereto from the judgment of the appellate division of the supreme court in and for the fourth judicial department, and John Boyd Thacher, the respondent in said action, afterwards appeared in said court of appeals by John A. Delehanty, his attorney.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

Whereupon, the said court of appeals having heard the cause argued by Mr. Edward Winslow Paige, of counsel for the appellants, and by Mr. John A. Delehanty, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the appellate division of the supreme court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered that the record aforesaid and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be and the same hereby is affirmed, with costs.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York before the justices thereof according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of appeals, clerk's office.

ALBANY, *December* 21st, 1901.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals with the papers originally filed therein, attached thereto.

[L. S.] W. H. SHANKLAND, *Clerk.*

At a special term of the supreme court of the State of New York, held in and for the county of Onondaga, at the court-house in the city of Syracuse, on the 27th day of December, 1901.

Present: Hon. Wm. S. Andrews, justice.

THE ONONDAGA NATION, TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, Sho-heh-do-nah, Ha-on-wen-go-wenle, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ah-owysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs,

against

JOHN BOYD THACHER, Defendant.

This cause having been brought on upon the remittitur sent down from the court of appeals and now filed in this court, by which remittitur it appears that an appeal was taken by the plaintiffs to said court of appeals from the judgment of the appellate division of the supreme court in the fourth judicial department, entered in the office of the clerk of Onondaga county on the 7th day of August, 1900, that said court of appeals has heard the cause argued by counsel for the appellants and respondent, respectively, and, after due deliberation had thereon, has ordered and adjudged that the judgment of the appellate division of the supreme court, appealed from herein, be, and the same hereby is, affirmed with costs and that the record and proceedings have been directed by said court of appeals to be remitted to this court and this court directed to enforce the said judgment of the court of appeals according to law,

Now, therefore, on motion of John A. Delehanty, of counsel for the defendant, it is

Ordered and adjudged, that the judgment of the said court of appeals be, and the same hereby is, made the judgment of this court and that the defendant have execution against the plaintiffs for the costs when adjusted by the clerk and inserted in the judgment, as well as for the amount adjudged to be recovered in and by the judgment of this court in this case entered in the office of the clerk of the county of Onondaga on the 26th day of December, 1899, and the judgment of affirmance thereof entered in the office of the clerk of the county of Onondaga on the 24th day of July, 1900, and that this order and judgment be annexed to the judgment-roll.

Enter.

W. S. A., *J. S. C.*

Supreme Court, Onondaga County.

THE ONONDAGA NATION, TE-HES-HA, SAY-haque, Hos-hay-qua, Sho-heh-do-nah, Ha-on-wen-go-wenle, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ho-ja-ah-Gwysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs,

against

JOHN BOYD THACHER, Defendant.

Judgment, December 27, 1901.

A judgment in this action in favor of the defendant against the plaintiffs having been rendered in this court on the 26th day of December, 1899, upon the findings and decision of the court for the sum of $169.28, costs and disbursements, and the plaintiffs having appealed from said judgment to the appellate division of the supreme court in the fourth judicial department and the said judgment having been affirmed in all things by said appellate division of the supreme court and judgment of affirmance having been rendered thereon and entered in the office of the clerk of Onondaga county on the 24th day of July, 1900, directing that the defendant recover against and from the plaintiffs the sum of $157.45 for his costs and disbursements on said appeal; and the plaintiffs having appealed therefrom to the court of appeals and the said court of appeals having sent hither its remittitur filed herein the — day of December, 1901, by which it appears that the said court of appeals has affirmed the said judgment in all things with costs and has given judgment accordingly and has remitted the judgment of the said court of appeals to this court to be enforced according to law; and this court having, by an order entered herein the 27th day of December, 1901, ordered that said judgment be made the judgment of this court with costs, the same having been adjusted by the clerk at the sum of one hundred and sixty-nine dollars and sixty-eight cents ($169.68), as per bill of costs filed with the clerk of Onondaga county and of this court on this day:

Now, on motion of John A. Delehanty, attorney for the defendant, it is

Adjudged, that the judgment of the said court of appeals be, and the same hereby is, made the judgment of this court, and that the defendant recover of and against the plaintiffs the sum of one hundred and sixty-nine dollars and sixty-eight cents ($169.68), as and for his costs and disbursements of said appeal to the court of appeals and have execution therefor.

JAS. E. HUBBELL, *Clerk.*

(Endorsed:) Filed Dec. 27, 1901, 11.45 a. m.

[Endorsed:] Supreme Court. The Onondaga Nation and others, plaintiffs, against John Boyd Thacher, defendant. Copy. Order and judgment on remittitur. John A. Delehanty, attorney for defendant. Office and Post-office address, the Commercial Bank building, 38 & 40 State St., Albany, N. Y.

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington within thirty days from this date to answer the complaint of the Onondaga Nation and others pursuant to a writ or error this day granted and allowed by the Honorable Rufus W. Peckham and directed to the justices of the supreme court of the State of New York

Sixth of January 1902

R. W. PECKHAM.

To John Boyd Thacher.

Due service of the within citation is admitted this eighth of January 1902

(S'd) JOHN A. DELEHANTY,
Attorney for Defendant, Albany, N. Y.

(Endorsed:) Filed Jan'y 16, 1902.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable justices of the supreme court of the State of New York for the fourth judicial department, Greeting:

Because in the record and proceedings as also in the rendition of judgment of a suit which is in the said supreme court before you or some of you, said judgment having been affirmed by the court of appeals of the State of New York which is the highest court of law and equity of that State, and the record having been remitted from said court of appeals to your court—which suit was between The Onondaga Nation; Te-hes-ha, Say-ha-que, Hos-hay-qua, Sho-heh-do-nah, Ha-on-wen-go-wenle and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian; and The University of the State of New York, plaintiffs,—and John Boyd Thacher defendants; wherein was drawn in question the *the* validity of a statute or treaty of or an authority exercised under the United States and the decision was against their validity, or the validity of a statute or an authority exercised under said — on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the right, title, privilege or exemption claimed under such Constitution, treaty, statute or commission, a manifest error hath happened to the great damage of the said plaintiffs as by their complaint appears, we being willing that error, if any there hath been, should be corrected do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings with all things concerning the same to the Supreme Court of the United States together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the Supreme Court may cause further to be done what should be done—

Witness the Honorable Melville W. Fuller, Chief Justice of the United States at the city of Utica, in the northern district of New York, the eighth day of January, one thousand nine hundred and two

Seal of the U. S. Circuit Court, Northern District N. Y.

W. S. DOOLITTLE,
Clerk U. S. Circuit Court, Northern District of New York.

The foregoing writ of error is allowed and is to operate as a supersedeas on the filing of a bond for five hundred dollars.
Jan'y 6, 1902.

R. W. PECKHAM.

[Endorsed:] No. —. United States Supreme Court. Writ of error

STATE OF NEW YORK, *ss:*

And now here the justices of the supreme court of New York for the fourth judicial department make return of this writ by annexing hereto and sending herewith under the seal of the said court for Onondaga county a true and attested copy of the record and proceedings in the suit within mentioned with all things concerning the same to the Supreme Court of the United States as within commanded.

Court of Appeals of the State of New York.

THE ONONDAGA NATION, UNIVERSITY OF THE STATE OF NEW York, Say-ha-que, an Onondaga Indian; Hos-hay-qua, an Onondaga Indian; Sho-heh-do-nah, an Onondaga Indian; Ha-on-wengo-wenlè, an Onondaga Indian; Jarvis Farmer, an Onondago Indian; Ho-do-oh-go-ah, a Seneca Indian, and Ha-ja-ah-gwysh, a Cayuga Indian, Plaintiffs, Appellants,

vs.

JOHN BOYD THACHER, Defendant, Respondent.

Know all men by these presents, that the Lawyers' Surety Company of New York, having an office and principal place of business at Nos. 32, 34 and 36 Liberty street, in the city of New York, county and State of New York is held and firmly bound unto the above-named defendant in the sum of five hundred (500) dollars to be paid to the said defendant for the payment of which well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with its seal, and dated the 3rd day of January 1902.

Whereas, the above-named plaintiffs have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the court of appeals of the State of New York,

Now, therefore, the condition of this obligation is such, that if the above-named plaintiffs shall prosecute said writ of error to effect, and

answer all damages and costs if they fail to make their plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THE LAWYERS' SURETY COMPANY OF NEW YORK,
By JOEL B. ERHARDT, *President.*

Attest:
[SEAL.] By JOEL RATHBONE, *Secretary.*

STATE OF NEW YORK, *County of New York,* } ss:

On the 3rd day of January in the year 1902, before me personally came Joel B. Erhardt, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he is the president of the Lawyers' Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720 of the New York Session Laws of 1893.

[SEAL.] H. G. HINTON,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 and 36 Liberty street, in said city, on the 21st day of April, 1897, on motion, it was unanimously

"Resolved, That the president, the vice-president, the acting president or the second vice-president be, and either of them is, hereby "authorized and empowered to sign, execute and deliver any and "all bonds or undertakings for or on behalf of the company, and to "attach thereto the seal of the corporation, the same to be attested "by the secretary or the acting secretary."

COUNTY OF NEW YORK, ss:

I, Joel Rathbone, secretary of the Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand, and the seal of the company at the city of New York, this 3rd day of January, 1902.

[SEAL.] JOEL RATHBONE, *Secretary.*

[Endorsed:] Court of appeals of the State of New York. The Onondaga Nation & o'rs, plaintiffs and app'l'ts, against John Boyd Thacher, defendant and resp't. Copy. Undertaking on appeal.

Surety: The Lawyers' Surety Company of New York. —— ——, attorney for appellant. Approved under section 811 Code of Civil Procedure.

(Endorsed:) The within undertaking approved sixth of January 1902. R. W. Peckham. Filed Jan'y 16, 1902.

I James E. Hubbell clerk of the supreme court of the State of New York for and in the county of Onondaga do hereby certify that the annexed papers constitute and are the writ of error allowed herein by the Honorable Rufus W. Peckham associate justice of the Supreme Court of the United States and that copies of the bond filed upon the granting of the said writ, of the record and proceedings upon which the court of appeals acted in rendering judgment herein, of the judgment and opinion of said court, of the order and judgment of the supreme court thereupon, of the citation with proof of service, and of the whole and each and every of the said papers the originals of all of which were duly filed in this office.

[Onondaga County Seal.]

JAS. E. HUBBELL,
County Clerk.

[Endorsed:] Supreme court. The Onondaga Nation & o'rs vs. J. B. Thacher. Return.

In the Court of Appeals of the State of New York.

THE ONONDAGA NATION; TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, Sho-heh-do-nah, Ha-on-wen-go-wen-le, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ha-gwysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs and Appellants,

against

JOHN BOYD THACHER, Defendant and Respondent.

Brief for Plaintiffs.

Facts.

First Head: Nature of the Action and the Appeal.

The action was originally brought by the Onondaga Nation and Te-hes-ha, "on behalf of all of the Ho-de-no-sau-nee as well as themselves" and the defendant answered, alleging:

First. That he was "the true and lawful owner of each and every "of said belts of wampum" (fol. 59);

Secondly. Denied that they were the property of the Ho-de-no-sau-nee (fol. 72), and

Thirdly. Alleged that the plaintiffs had not capacity to sue (fol. 76).

At the beginning of the trial the other plaintiffs were brought in (fol. 80), and the court made an order amending the complaint by inserting at the beginning, this allegation: The "plaintiffs bringing

"this action on behalf of all the Ho-de-no-sau-nee as well as themselves, show to the court" and by adding the following other allegations: "That on the twenty-sixth day of February, 1898, the "Onondaga nation elected the University of the State of New York "to the office of wampum-keeper, and by bill of sale, sold and "transferred to the University of the State of New York all its interest in the said wampums."

The order further ordered—"that the answer be deemed to deny "the said allegations" (just quoted) "without further service if so "desired by the defendant, and that the defendant may plead the "statute of limitations" (fol. 79).

The defendant served no further answer.

The trial court dismissed the complaint upon the grounds:

1. That the action could not be maintained without a demand; and

2. That though the wampums had once been the property of the Five nations they had come to be the individual property of Thomas Webster, an Onondaga Indian, who had sold them to General Carrington, who had sold them to Doctor Crane, who had sold them to the defendant (fols. 473–479).

An appeal had been taken by the defendants and it had been argued when the opinion of the court in *Johnson v. The Long Island Railway Company* (162 N. Y. 462:—opinion *post*, Appendix 1) came down and was furnished the appellate division. The appellate division thereupon affirmed the judgment—holding

First. That the defendant plaintiffs had not, under the *Johnson case*, capacity to sue—and, in this connection, it *is* by order amended the answer so as to make it plead want of capacity in the plaintiffs who had been brought in at the trial (fol. 514).

Secondly. That the Onondaga nation had *no power* to elect the University of the State of New York wampum-keeper—the language of the opinion being, "It seems to us, ridiculous, however, "to say that it could be constituted a wampum-keeper of any tribe "or confederacy. It was not an Indian, and had no statutory right "or power to be constituted an Indian or wampum-keeper of the "kind indicated by the evidence given in the case. This claim is "not worthy of any serious consideration" (fol. 527), and it thereupon held that the action of the University of the State of New York must fail—and,

Thirdly. It held that the defendant had good title to the belts. The reasoning of the court being—"There is proof of Webster's "ownership of the belts, in the fact of his possession thereof, *independent of any proof of his having been a wampum-keeper*, for years "prior to his transfer thereof in 1891" (fol. 533).

Second Head: The Findings.

"I. That during a period of many years prior to the year 1713, "there existed a confederacy of Iroquois Indians composed of the "Onondaga, Oneida, Mohawk, Seneca and Cayuga tribes, designated

" in their own language as the Ho-de-no-sau-nee, but known and " referred to in history as the League of the Five Nations.

" II. That thereafter and in or about the year 1713, another tribe " known as the Tuscaroras was received into said confederacy and " thereafter the league was known and referred to as the League of " the Six Nations.

" III. That during the earliest period of the existence of said con- " federacy, the Indians of which said league was composed made " use of strings of wampum beads or shells braided or pleated " together in broad bands and commonly known as wampum belts, " as a means of commemorating and preserving the memory of im- " portant events such as the making of treaties, the coming of the " white man, &c., and that while the league of the Iroquois was in " active existence the tribes or members thereof composing it employed " this method of preserving the history of the events which they " conceived to be of importance.

" IV. That while such custom was in vogue the care and custody " of such wampum belts as were so used was entrusted to the Onon- " daga nation, which appointed one of its members as an official " sometimes designated as the 'wampum-keeper,' whose duty was " to preserve the same and upon ceremonial occasions expound " them and emphasize their meanings and significance.

" V. That the wampum belts mentioned and described in the " complaint in this action constituted a portion of the wampum " belts at one time made and possessed by the league and used for " the foregoing purposes.

" *VI. That at a time many years prior to the 10th day of February,* " *1891, the ancient Confederacy above referred to, composed first of the* " *five and then of the six tribes or nations of Indians above mentioned,* " *was dissolved and thereafter had no active or actual existence. That* " *its respective names had become associated with a period long gone by;* " *that the tribes of which it consisted had become separated, and to a* " *large extent scattered and dispersed throughout the United States of* " *America and the Dominion of Canada, and those who had remained* " *in this country had become wards of the Government.*

" *VII. That on and after the happening of the foregoing events, viz.:* " *the dissolution and disruption of the said Iroquois Confederacy, the* " *use of the wampum belts for any of the foregoing purposes for which* " *they were originally preparem became obsolete. The wampum there-* " *upon became nothing more than curiosities and relics of a time, condi-* " *tion and confederation which had ceased to exist, and the office or posi-* " *tion of wampum-keeper, so far as its original significance is concerned,* " *became useless and was abrogated.*

" *VIII. That on the 10th day of February, 1891, and for many years* " *prior thereto, one Thomas Webster, an Onondaga Indian, had become* " *the owner and was in possession of several of the wampum belts above* " *referred to, including those enumerated in the complaint herein. That* " *said Webster was not then, and never was, an incumbent of the office or* " *position of wampum-keeper of the Onondaga Nation or of any of the* " *individual tribes composing the Iroquois Confederacy, and that there* " *was at that time no such official position known or recognized among*

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"*the Indians composing any or either of said tribes or confederacy.*
"*That the individual or personal ownership of said Thomas Webster in*
"*said wampum belts was recognized by the said several tribes which*
"*formerly constituted said League and by the individual members thereof,*
"*and that said tribes and Indians had long prior to that time ceased to*
"*treat or regard said wampum belts as the property of either the Onon-*
"*daga Nation or the Iroquois League.*"

Italics and capitals mine.

POINTS.

Point I.

The wampums are the property of the Ho-de-no-sau-nee—that is: the Five nations or the Six nations as it may be. The plaintiff—The Onondaga Nation—is their official custodian, *forever:* and the plaintiff—The University of the State of New York—having been elected wampum-keeper by the Onondaga nation and directed by a resolution of that nation's governing council, "to get possession of "and safely keep forever all wampums of the Onondaga nation and "the Five nations and Six nations and each of them," is entitled to their possession.

I.

The trial court has found (fols. 88–91):

"I. That during a period of many years prior to the year 1713, "there existed a confederacy of Iroquois Indians composed of the "Onondaga, Oneida, Mohawk, Seneca and Cayuga tribes, designated "in their own language as the Ho-de-no-sau-nee, but known and "referred to in history as the League of the Five Nations.

"II. That thereafter and in or about the year 1713, another "tribe known as the Tuscaroras was received into said confederacy "and thereafter the league was known and referred to as the League "of the Six Nations.

"III. That during the earliest period of the existence of said "confederacy, the Indians of which said league was composed made "use of strings of wampum beads or shells braided or pleated "together in broad bands and commonly known as wampum belts, "as a means of commemorating and preserving the memory of im-"portant events such as the making of treaties, the coming of the "white man, &c., and that while the league of the Iroquois was in "active existence the tribes or members thereof composing it em-"ployed this method of preserving the history of the events which "they conceived to be of importance.

"IV. That while such custom was in vogue the care and custody "of such wampum belts as were so used was entrusted to the Onon-"daga nation, which appointed one of its members as an official "sometimes designated as the 'wampum-keeper,' whose duty it "was to preserve the same and upon ceremonial occasions expound "them and emphasize their meanings and significance.

"V. That the wampum belts mentioned and described in the

"complaint in this action constituted a portion of the wampum "belts at one time made and possessed by the league and used for "the foregoing purposes."

Point II.

The plaintiffs have capacity to sue.

I.

The Indians.

In Jackson *v.* Goodell, 20 J. R. 188, the late supreme court held that the Oneida nation had not capacity to sue.

The court of errors reversed the supreme court.

Goodell *v.* Jackson, 20 J. R. 693.

In Strong *v.* Waterman, 11 Paige 607, and Montauk Tribe *v.* Long Island R. R., 28 App. Div. 470, it was held that individual Indians had capacity to sue.

It seemed, therefore, at the time this action was begun, that either the Onondaga nation or the individual Indian plaintiffs could maintain the action.

As to this we ask leave to call to the attention of the court section 5 of the Indian law, which, as it was not cited, may possibly not have been brought to the attention of the court—it is in these words:

"§ 5. Actions in State courts.—Any demand or right of action, "jurisdiction of which is not conferred upon a peacemaker's court, "may be prosecuted and enforced in any court of the State, the "same as if all the parties thereto were citizens."

Peacemakers' courts are confined to the Senecas (fol. 281), and the trial court so held—holding that the individual Indians could bring it, but that the nation could not.

We had meant, in the existing state of adjudged cases—Chancellor Walworth's decision having been—so far as his opinion shows—based entirely upon the reversed decision of the supreme court in *Jackson v. Goodell*, 20 J. R. 188, and apparently in ignorance of its reversal by the court of errors (20 J. R. 693)—to go on with whichever plaintiff the court finally held entitled to sue and pay the bill of costs for the others.

But after the case had been argued in the appellate division, but before it was decided, the court decided the case of *Johnson v. Long Island Railroad Company*, 162 N. Y. 462 (opinion attached to this brief—Appendix, p. 1).

Assuming however that the rule in the *Johnson* case applies, and the Indians have not capacity to sue *to recover the possession* of the wampum records—we submit this:

The court distinguishing as it does, Strong v. Waterman (11 *Paige*, 607), *it follows that an individual Indian can file a bill in equity to protect the property;*

and therefore, of course, this bill is properly filed by the individual plaintiffs to enjoin the defendant from "disposing of, destroying,

"cutting, mutilating, concealing or removing out of the jurisdiction "of the court" the wampums in question—the statute—section five of the Indian law (just quoted and *post*, Appendix, p. 7)—giving them capacity to sue to that extent.

That is to say, the words of the Indian law being:

"§5. Actions in State courts.—Any demand or right of action, "jurisdiction of which is not conferred upon a peacemaker's court, "may be prosecuted and enforced in any court of the State, the same "as if all the parties thereto were citizens,"

the individual plaintiffs can file this bill to *protect* the records from destruction although they have not capacity to sue for delivery of the possession of them.

Peacemakers' courts are confined to the Senecas (fol. 281).

There should therefore, notwithstanding this, be a new trial so far as the individual Indians are concerned.

II.

The University of the State of New York.

It is a corporation "forever" with "capacity" of "suing" and "being sued" (Ap'd'x 9, 16).

The State museum is a part of it (App. 18), and it has power to buy, sell, exchange or receive by "will, gift, *or* on deposit articles "or collections properly *pertaining* thereto" (Ap'd'x 18, *i. e.*, properly pertaining to the State museum).

By chapter 586 of the Laws of 1896 the Indian section of the State museum was made (Ap'd'x 19) and there cannot be any doubt but what the wampum records in question are "properly pertaining *thereto*."

Assuming now that the Onondaga nation could give to the University of the State of New York the power "to get possession of and "safely keep forever all wampums of the Onondaga nation and the "Five nations and the Six nations and each of them" (fol. 186), it follows that the University of the State of New York can maintain this action.

II.

The Existence of the Six Nations.

In the case of *The Kansas Indians*—already cited (5 Wall., 737), the head-note contains the following:

"If the Tribal organization of Indian bands is recognized by the "political department of the National Government as existing; that "is to say, if the National Government makes treaties with, and has "its Indian agent among them, paying annuities and dealing other-"wise with 'head men' in its behalf, *the fact that the primitive habits "and customs of the tribe, when in a savage state, have been largely "broken into by their intercourse with the whites,—in the midst of whom, "by the advance of civilization, they have come to find themselves*—DOES "NOT AUTHORIZE A STATE GOVERNMENT TO REGARD THE TRIBAL

"ORGANIZATION AS GONE, and the Indians as citizens of the State "where they are, and subject to its laws."

Italics and capitals mine.

And the court, speaking by Mr. Justice Davis, said (p. 756):

"The treaty of 1854 left the Shawnee people a united tribe, with "a declaration of their dependence on the National Government for "protection and the vindication of their rights. Ever since this "their tribal organization has remained as it was before. They have "elective chiefs and an elective council; meeting at stated periods; "keeping a record of their proceedings; with powers regulated by "custom; by which they punish offences, adjust differences, and "exercise a general oversight over the affairs of the Nation. This "people have their own customs and laws by which they are gov- "erned. *Because some of those customs have been abandoned owing "to the proximity of their white neighbors*, may be an evidence of the "superior influence of our race, *but does not tend to prove that their "tribal organization is not preserved.* There is no evidence in the "record to show that the Indians with separate estates have not the "same rights in the tribe as those whose estates are held in common. "Their machinery of government, though simple, is adapted to their "intelligence and wants, and effective, with faithful agents to watch "over them. If broken into, it is the natural result of Shawnees "and whites owning adjoining plantations, and living and traffick- "ing together as neighbors and friends."

And page 757:

"Conferring rights and privileges on these Indians cannot affect "their situation, *which can only be changed by a treaty stipulation or "a voluntary abandonment of their tribal organization. As long as the "United States recognizes their national character they are under the "protection of treaties and the laws of Congress*, and their property is "withdrawn from the operation of State laws."

Italics and capitals mine.

The New York Indians, 5 Wall. 761 (reversing *Fellows v. Denniston*, 23 N. Y. 420), was this:

An act was passed taxing lands occupied by the Senecas which, however, contained this proviso (p. 764)—"PROVIDED, *That no sale "for the purpose of collecting said taxes shall in any manner affect the "right of the Indians to occupy said lands.*"

The court, speaking by Mr. Justice Nelson, said: (1866, p. 766)

"This last section furnishes, doubtless, a solution of what we "must otherwise regard as a very free, if not extraordinary, exercise "of power over these reservations and the rights of the Indians, so "long possessed and so frequently guaranteed by treaties. These "treaties are historical and need not be referred to, beginning in "1784 and coming down to 1842. That of 1794, entered into at "Canandaigua, New York, may be cited as a specimen. Third arti- "cle, 'The United States acknowledge all the land within the afore- "'mentioned boundaries (which include the reservations in question) "'to be the property of the Seneca Nation, and the United States "'will never claim the same nor disturb the Seneca Nation * * * "'in free use and enjoyment thereof; but it shall remain theirs

"'until they choose to sell the same to the people of the United "'States, who have the right to purchase,'" (p. 768) "but the rights "of the Indians do not depend on this or any other statutes of the "State, but upon treaties which are the supreme law of the land; "it is to these treaties we must look to ascertain the nature of these "rights, and the extent of them."

(p. 770:) "The tax imposed on the Buffalo reservation in 1840, "1841, 1842 and 1843, is not distinguishable from that imposed on "the Alleghany and Cattaraugus reservations. The Indians were still "in their ancient possessions and occupancy, and *till removed by the "United States* were entitled to the undisturbed enjoyment of them."

(p. 771:) "All agree that the Indian right of occupancy creates an "indefeasible title to the reservations that may extend from genera- "tion to generation, *and will cease only by the dissolution of the tribe* "or their consent to sell to the party possessed of the right of pre- "emption."

(p. 771:) "Our conclusion is that the whole of the taxes assessed "upon the three reservations (Buffalo Creek, Alleghany and Catta- "raugus), are illegal and void, *as in conflict with the tribal rights of "the Seneca* NATION *as guaranteed to it by treaties with the United "States.*"

Italics and capitals mine.

Facts as to this Matter.

In the Court of Appeals.

THE ONONDAGA NATION and Others
against
JOHN BOYD THACHER.

The Washington Treaty.

The original treaty is written on parchment and is signed by Timothy Pickering and fifty-nine Indians including Handsome Lake, Cornplanter and Red Jacket, with a seal of red sealing wax opposite each name.

There are eight witnesses and four interpreters, including Henry Abeele—who must have been the son of the "O'Bail" of the revolution and the half-brother of Cornplanter.

All this is *almost* accurately given in Folwell.

To the top and the bottom of it are attached by narrow light-blue silk braid, two strips of parchment—of the entire width of the treaty.

On the upper strip is written:

"George Washington, President of the United States of America, "to all to whom these presents shall come, Greeting:

"WHEREAS a treaty of peace and friendship between the United "States of America and the tribes of Indians called the Six nations, "was made and concluded on the eleventh day of November last by "Timothy Pickering the agent of the United States for that purpose

"appointed, on the one part and the chiefs and warriors of the Six "nations on the other part which treaty is in the form and words "following:"

Then comes the treaty—and then, upon the lower strip—this:

Now know ye, that I having seen and considered the said treaty, do by and with the advice and consent of the Senate of the United States accept ratify and confirm the same and every article and clause thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed, and signed the same with my hand.

Given in the city of Philadelphia, the twenty-first day of January in the year of our Lord one thousand seven hundred and ninety-five, and in the nineteenth year of the Sovereignty and Independence of the United States.

Seal of the United States.

G°. WASHINGTON.

By the President.
EDM. RANDOLPH.

This belt was delivered by General Washington himself to the chiefs and at the same time he gave Red Jacket a large silver medal, which I have often seen in the hands of General Parker, Red Jacket's grandson.

The wampum record of this treaty being the only thing in the way of a deed for their lands which the Indians have—at any rate the only evidence of a title protected by the Constitution of the United States—there is this question:

Can one who gets possession of one's deed establish his ownership of that deed by the use of the statute of limitations and other "unmeritorious" defences? If he can, of course, he can destroy the deed—and the evidence of the title is gone.

There is not just now any immediate danger of that in this case, because the treaty in Washington still is in the hands of the Government. But suppose the same thing were to happen to that?

AS-QUE-SENT-WAH.

The treaty of 1794, referred to and quoted by Mr. Justice Nelson above (5 Wall. 766) is the treaty of which the wampum record uppermost in the lower right-hand picture facing page 104 is the Indian record.

It was delivered by General Washington himself upon the ratification of the treaty.

That treaty contains the following:

2 Folwell's United States Laws, 437; 7 Stat. at Large, 44.

"The President of the United States having determined to hold a "conference with the Six nations of Indians, for the purpose of re-"moving from their minds all causes of complaint, and establish-"ing a firm and permanent friendship with them; and Timothy "Pickering being appointed sole agent for that purpose; and the

"agent having met and conferred with the sachems, chiefs and "warriors of the Six nations, in a general council: Now, in order to "accomplish the good design of this conference, the parties have "agreed on the following articles; which, when ratified by the "President, with the advice and consent of the Senate of the United "States, shall be binding on them and the Six nations.

"ARTICLE I.

"Peace and friendship are hereby firmly established, and shall "be perpetual, between the United States and the Six nations.

"ARTICLE II.

"The United States acknowledge the lands reserved to the Oneida, "Onondaga and Cayuga nations, in their respective treaties with "the State of New York, and called their reservations, to be their "property; and the United States will never claim the same, nor "disturb them or either of the Six nations, nor their Indian friends "residing thereon and united with them, in the free use and enjoy-"ment thereof; but the said reservations shall remain theirs, until "they choose to sell the same to the people of the United States, who "have the right to purchase.

* * * * * * *

"ARTICLE IV.

"The United States having thus described and acknowledged "what lands belong to the Oneidas, Onondagas, Cayugas and "Senekas, and engaged never to claim the same, nor to disturb "them, or any of the Six nations, or their Indian friends residing "there and united with them, in the free use and enjoyment thereof: "Now, the Six nations, and each of them, hereby engage that they "will never claim any other lands within the boundaries of the "United States; nor ever disturb the people of the United States in "the free use and enjoyment thereof."

"ARTICLE V.

The Seneka nation, "*all others of the Six nations concurring*," cede to the United States land for "a waggon road" from Fort Schlosser to Lake Erie, as far south as Buffalo creek.

"ARTICLE VI.

"In consideration of the peace and friendship hereby established, "and of the engagements entered into by the Six nations; and be-"cause the United States desire, with humanity and kindness, to "contribute to their comfortable support; and to render the peace

" and friendship hereby established, strong and perpetual; the United " States now deliver to the Six nations, and the Indians of the other " nations residing among and united with them, a quantity of goods " of the value of ten thousand dollars. And for the same considera- " tions, and with a view to promote the future welfare of the Six na- " tions, and of their Indian friends aforesaid, the United States *will* " *add the sum of three thousand dollars to the one thousand five hundred* " *dollars, heretofore allowed them* by an article ratified by the Presi- " dent, on the twenty-third day of April, 1792; *making in the whole* " *four thousand five hundred dollars; which shall be expended yearly* " *forever in purchasing cloathing, domestic animals, implements of hus-* " *bandry, and other utensils suited to their circumstances,* and in com- " pensating useful artificers, who shall reside with or near them, and " be employed for their benefit. The immediate application of the " whole annual allowance now stipulated to be made by the superin- " tendent appointed by the President for the affairs of the Six nations, " and their Indian friends aforesaid."

Italics mine.

(p. 441:) DONE *at Kon-on-daigua, in the State of New York, the eleventh day of November, in the year one thousand seven hundred and ninety-four.*

Appropriation Bill of March, 1901.

31 Stat. at Large, p. 1064.

"SIX NATIONS OF NEW YORK.

" For permanent annuity, in clothing and other useful articles, per " sixth article of treaty of November eleventh, seventeen hundred " and ninety-four, four thousand five hundred dollars."

" Approved, March 3, 1901 " (p. 1085).

There is an United States agent for this (1 Off. Reg. 772).

And they are just as numerous as they were in the days of their great Indian empire (fol. 269).

Brief.

I.

The court has overlooked the fact that there is not any evidence to sustain the finding that

" Said University of the State of New York never was selected or " raised up to the position or office of wampum-keeper, and no offi- " cial proceedings were ever begun on the part of any of the tribes " of Indians which formerly composed said Iroquois confederacy " for the purpose of conferring any such position or office upon said " University of the State of New York, assuming that there is or was " at the time of said alleged proceedings any such official position."

I make this with much diffidence because the opinion of the court says the exact opposite, but, as it seems to me that there is no such evidence, I respectfully and with deference submit that it is my duty to beg the attention of the court to the fact.

The evidence is as follows:

Upon the trial the plaintiffs offered in evidence what they claimed to be certain proceedings of the governing council of the Onondaga nation,

These alleged proceedings are printed in full as an appendix to this.

and the following things then happened (fol. 182):

Mr. Paige: * * *

"I will offer in evidence minutes of a Council held by the Onon-"dagas on the 26th of February, 1898.

"You do not object on the ground that the signatures are not proved?

"*Mr. Delehanty:* No, I will admit that is A GENUINE DOCUMENT, *and the genuine signatures are there.*"

Capitals and italics mine.

This "genuine document" recites that "at a council of the Onon-"daga nation" in Onondaga, "held pursuant to call and notice "given to all the chiefs"—there were present twelve chiefs includ-ing the president, secretary and treasurer of the nation, and that the following resolution was unanimously adopted—

"*Resolved,* That the University of the State of New York be and it "hereby is elected wampum-keeper of the Onondaga Nation, *with* "*full power and it shall be its* DUTY *to* GET *possession of and safely keep* "FOREVER all wampums of the Onondaga Nation and the Five Na-"tions and Six Nations and each of them.

"Whereupon the University of the State of New York was unan-"imously elected to the office of Wampum-Keeper."

And it is further said to be *a true copy from the minutes.*

And then follow the "genuine" signatures of the twelve chiefs.

Capitals and italics mine.

Then followed this (fol. 197):

Mr. Paige: * * *

"I will put in from the record book of the Onondaga nation the "constitution with which the nation is at present governed. I will "have a copy sent to the stenographer. That will be Ex. 8."

This constitution is printed at folio 448. It contains the follow-ing:

"2nd. The sachem chiefs shall be enrolled in the Book of Rec-"ords, which shall be kept by the secretary of the nation in each "meeting of the chiefs; roll shall be called by the secretary of the "nation, *eight* of there number of the chiefs shall constitute a quorum "for the transaction of national business;"

There is not anything else of importance to this case in it except that it provides for the offices of president, secretary treasurer and marshall, and defines their duties.

We then called Baptiste Thomas, the treasurer of the nation, who testified that the number of the chiefs was about twenty-four (24) (fol. 436), and that the chiefs were appointed in the same way that they always had been (fol. 434).

We had already proved and the trial court had found that the Onondaga nation was the official custodian (fol. 90).

The above is ALL *the evidence.*

It is thus gravely admitted upon the record that at a regular council—being the sole governing body of the Onondaga nation—the university was directed and it was made its "DUTY to get possession of and safely keep forever all wampums."

The Onondaga nation has, we will say, some sixteen hundred members. Of course *all the sixteen hundred* members cannot be, all of them, keeping *four* wampums all the time.

Still, it is the *duty* of the nation to keep them safely. This being the case, cannot the governing council, even though it be composed of nothing as good as infants—since an infant can sue by a guardian while an Indian cannot sue in any way—*cannot the governing council put them in a safe deposit company?*

If it can, it is with deference submitted, that it can "deposit" them with the University of the State of New York.

Appendix.

At a council of the Onondaga nation held at the house of Daniel La Forte in Onondaga on the 26th day of February 1898 held pursuant to call and notice given to all the chiefs.

Present	
Te-hes-ha	Daniel La Forte, *president*
Say-ha-que	Baptist Thomas, *treasurer*
Ah-wa-ga-yat	Orris Farmer, *secretary of the nation*
Ha-say-gwa-e-say	Jacob Skenandoah
So-day-qua-scum	Asa Wheelbarrow
Sa-da-qua-seh	Jacob Bigbear
Ha-e-ho	Levi Webfter
O-gayis-qua	John Farmer
Ho-yo-ne-a-ne	William Webster
Ga-na-ha-guh-yat	Wallace Carpenter
Ha-wen-jo-wah-e	Enoch Skenandoah
Hos-hay-qua	Charles Lyon

Sachems and chiefs

The following resolutions were unanimously adopted.

Resolved, That the University of the State of New York be and it hereby is elected wampum-keeper of the Onondaga nation, with full power and it shall be its duty to get possession of and safely keep forever all wampums of the Onondaga nation and the Five nations and Six nations and each of them.

Whereupon the University of the State of New York was unanimously elected to the office of wampum-keeper.

A true copy from the minutes.

Say-ha-que	his BAPTIST x THOMAS. mark.
Sa-da-qua-seh	his JACOB x BIGBEAR. mark.
Ha-wen-jo-wah-e	ENOCH SCANANDOAH.
Ha-say-gwa e-say	JACOB A. SCANADOAH.
Ha-e-ho	his LEVI x WEBSTER. mark.
Ho-yo-ne-a-ne	his WILLIAM x WEBSTER. mark.
O-gayis-qua	JOHN R. FARMER.
Ga-na-ha-guh-yat	his WALLACE x CARPENTER. mark.
So-day qua-scum	his ASA x WHEELBARROW. mark.
Ah-wa ga-yat	ORRIS FARMER.
Te-hes-ha	DANIEL LA FORTE.
Hos-hay-qua	CHARLES LYON.

In presence of—

HARRIET MAXWELL CONVERSE.
A. G. RICHMOND.
EDWARD WINSLOW PAIGE.

STATE OF NEW YORK:

Court of Appeals.

CLERK'S OFFICE.

I, W. H. Shankland, clerk of the court of appeals of the said State of New York, do hereby certify that I have compared the annexed copy of excerpts from the briefs for the appellants, filed and used in the court of appeals of the State of New York, on the argument of the appeal in that court, in the case entitled as above, argued December 12th, 1901, with the originals on file in this office, and that the same are correct transcripts therefrom, and of the whole of said originals.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of Albany, this sixteenth day of July, A. D., 1902.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND, *Clerk.*

It is stipulated that the foregoing "excerpts from the briefs for the appellants" may be added to the record in the Supreme Court of the United States and that the points therein were taken in the State court and thus *is* a part of the record.

JOHN A. DELEHANTY,
Attorney for Defendant in Error.
FREDERICK W. CAMERON,
Attorney for Defendant in Error.

EDWARD WINSLOW PAIGE
Attorney for Plaintiff in Error.

[Endorsed:] File No. 18,394. Supreme Court U. S. October term, 1902. Term No. 234. The Onondaga Nation *et al.*, P. E., *vs.* Jno. Boyd Thacher. Stipulation of counsel and addition to record. Filed October 10", 1902.

Endorsed on cover: File No. 18,394. New York supreme court. Term No. 234. The Onondaga Nation, Te-hes, ha, Say haque, *et al.*, plaintiffs in error, *vs.* John Boyd Thacher. Filed February 4th, 1902.

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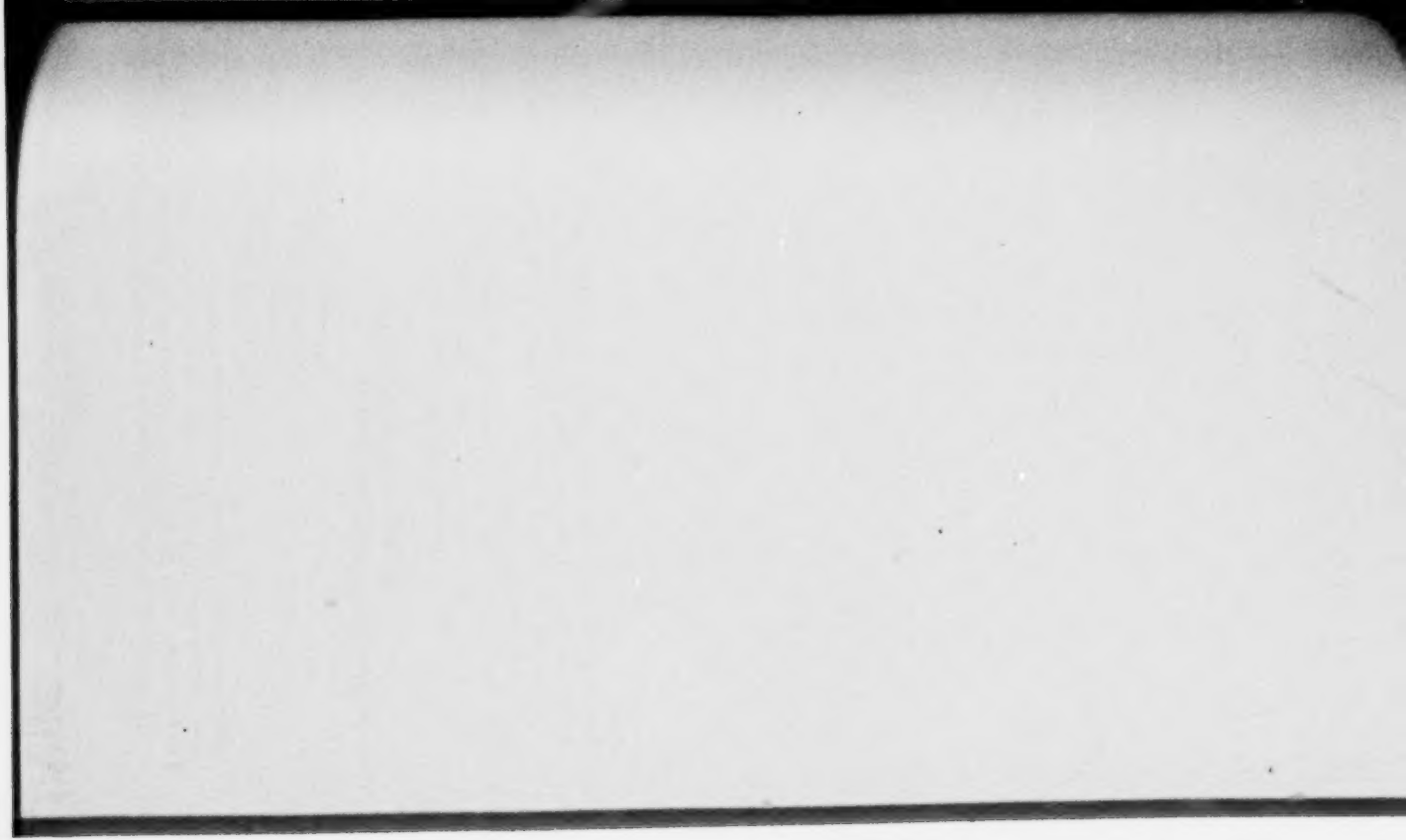

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Supreme Court of the United States

OCTOBER TERM, 1902.

Number 234.

Supreme Court U. S.
FILED
MAR 20 1903
JAMES H. McKENNEY,
Clerk.

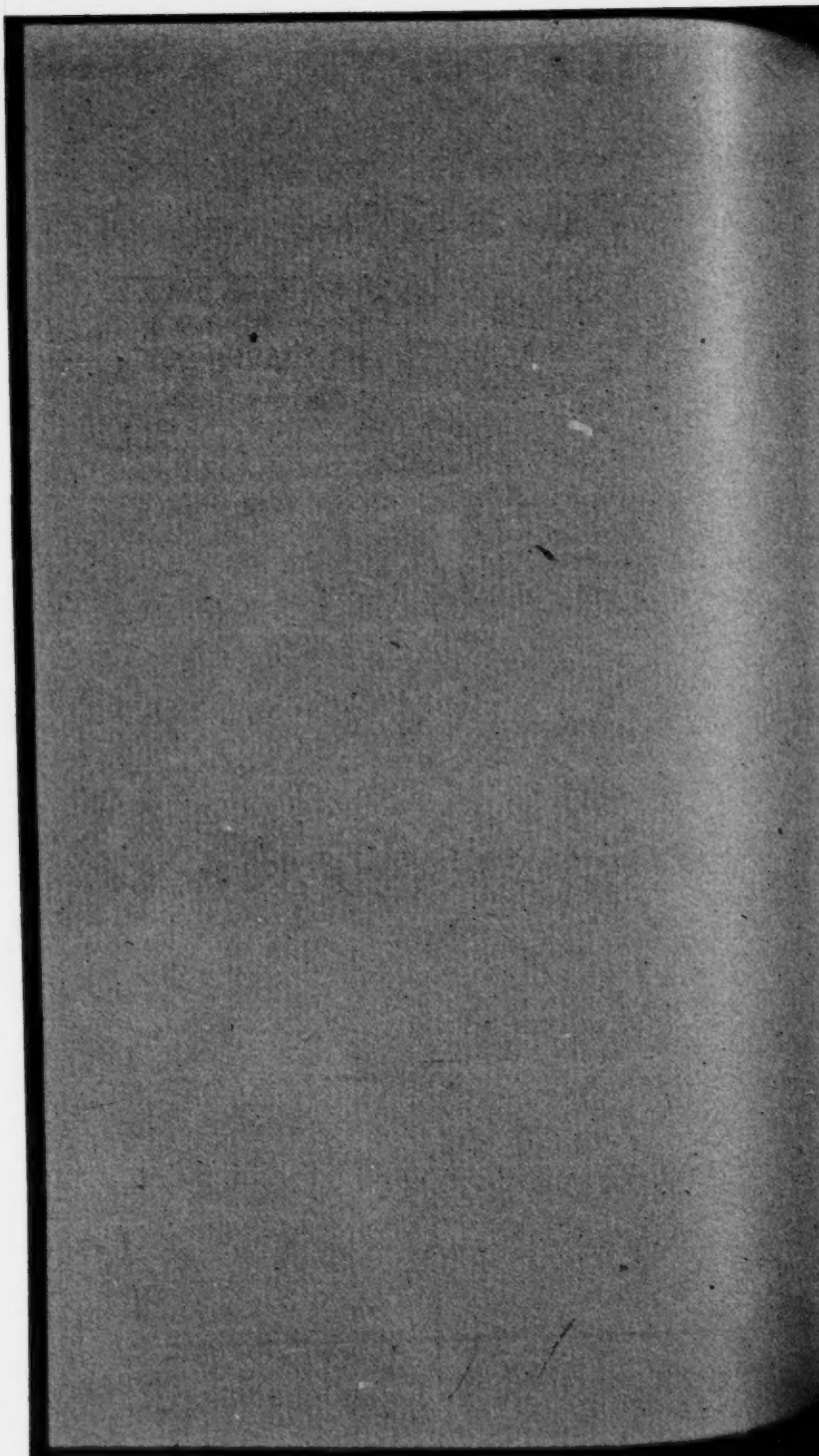
THE ONONDAGA NATION; TE-HEE-HA, SAY-HA-QUE, HOS-HAY-QUA, SHO-HEH-DO-HAH, HA-ON-WEH-GO-WEH-LE, AND JARVIS FARMER, ONONDAGA INDIANS; HO-DO-OH-GO-AH, A SENECA INDIAN; HA-JA-AH-GWYSH, A CAYUGA INDIAN, AND THE UNIVERSITY OF THE STATE OF NEW YORK,

Plaintiffs in Error,

VS.

JOHN BOYD THACHER,

Brief for the Plaintiffs in Error.



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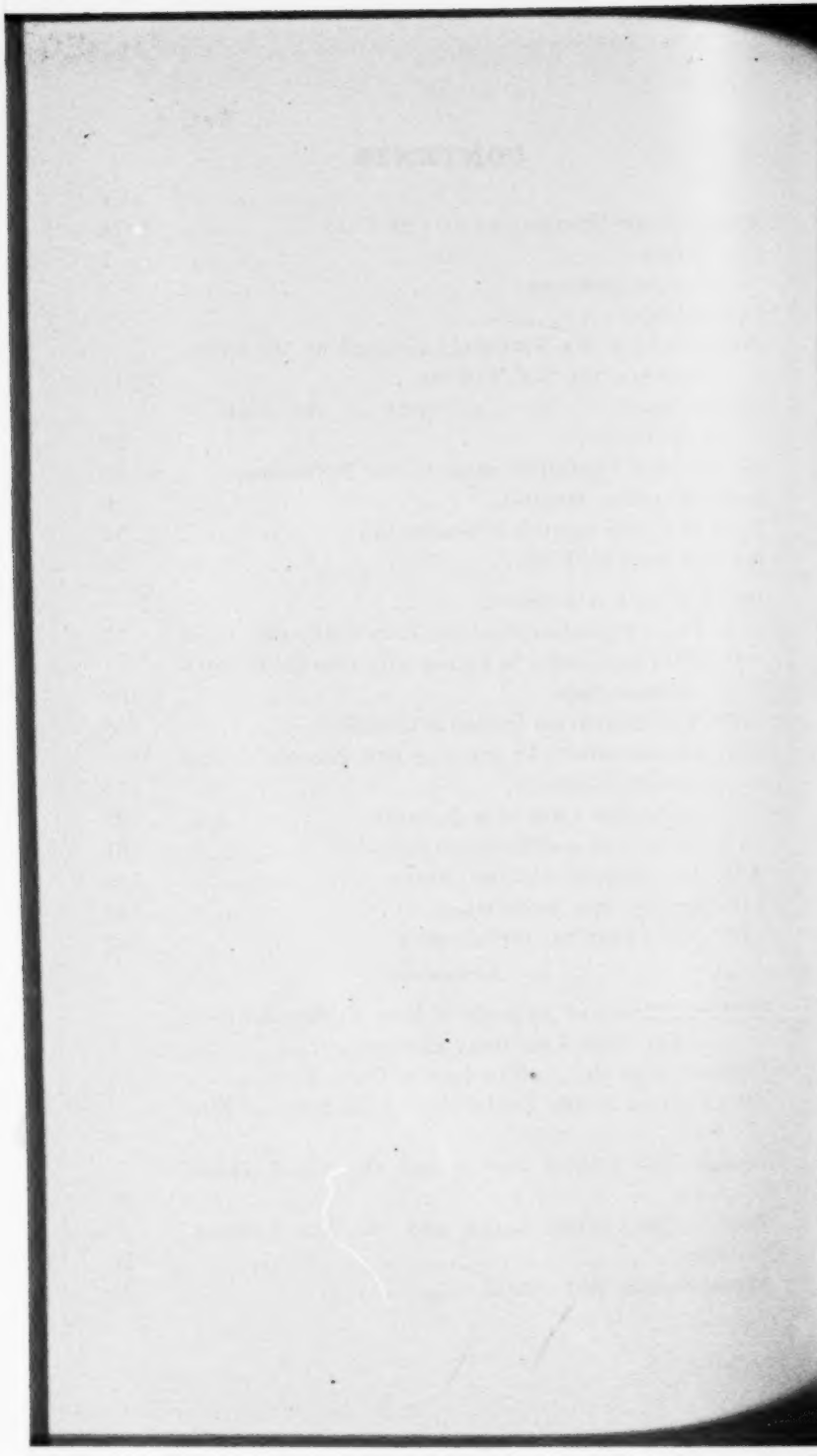

ABSTRACT OR STATEMENT OF THE CASE.

This is a writ of error, which brings up a judgment of the Supreme court of New York, made upon an order of the Court of Appeals of New York, which

AFFIRMED a judgment of the appellate division of the Supreme court of New York for the fourth department of that court, which had

AFFIRMED a judgment of the *special* term of the Supreme court of New York, for the county of Onondaga —the *special* term being, under the practice of that court, the *trial* court, for cases in equity—which judgment had

DISMISSED the complaint of the plaintiffs upon the merits of the action.

The plaintiffs below have been, as already said, beaten all the way through and are the plaintiffs in error here.

FIRST HEAD.—The Action.

The action is a bill in equity which prays that the defendant be enjoined from disposing of, destroying, cutting, mutilating, injuring, concealing, or removing out of the jurisdiction of that court, four wampum records of the people called by themselves Ho-de-no-sau-nee, and by us the Five Nations and the Six Nations, and by the French the Iroquois, and that he *deliver* them to the plaintiffs.

SECOND HEAD.—The Federal Question.

The people which call themselves the Ho-de-no-sau-nee, which are by us down to 1713 called the *Five* Nations, and since then the *Six* Nations—because in that year they took in the Tuscaroras although they did not, and do not yet, allow the Tuscaroras a representation in the general council—and which by the French were and are called the Iroquois—once ruled the country from the Atlantic nearly to the Rockies, and south to the northern borders of Georgia—the Cherokee country.

They then lived, and with the exception of one of the Nations—the Caniengas (Mohawks) they still live upon what they called, and still call, "the highest land on earth"—Schenectady to the Niagara river. The origin of the name being, that, as they said, in their elm bark canoes—the canoe birch does not now grow in our country and the canoes have to be made of elm bark which is not so good because it is much heavier and because the bark will only peel when the sap is running in the spring, and if you break your canoe later in the year you cannot

mend it—they could descend from that land in every way:
1—down the Oswego and Corlear's lake (Champlain) to the St. Lawrence and the Gulf.
2—down North river to the bay of New York.
3—down the South river (Delaware) to Delaware bay.
4—down the Susquehanna to the Chesapeake.
5—down the Alleghaney *to the Gulf of Mexico;* and
6—although Lake Erie is level you have to go down the bank to get to it and then the whole north west country is open—with but a single carry at the Sault Ste. Marie.

They had no written language, but kept their records of things by belts of wampum—which differed in their make—and each of which was the record of some particular event.

In 1794 the United States of America made its first treaty with them. *The white man's copy of that treaty* is in the Secretary of State's office. It is pretty fairly copied in Folwell (2, 437) and Statutes at Large (7, 44), and as good a copy of it as I can make is the last Appendix to this brief.

BUT *the* INDIAN'S RECORD *of that treaty is one of the wampums which this action is about*—the upper one in the lower right-hand picture facing the page 104 of the record—DELIVERED BY GENERAL WASHINGTON HIMSELF.

By that treaty it was provided:

"ARTICLE I.

"Peace and friendship are hereby firmly established, "and shall be perpetual, between the United States and "the Six Nations.

"ARTICLE II.

"The United States acknowledge the lands reserved to "the Oneida, Onondaga and Cayuga Nations, in their re-"spective treaties with the State of New York, and called

"their reservations, to be their property; and the United "States will never claim the same, nor disturb them or "either of the Six Nations, nor their Indian friends resid- "ing thereon and united with them, in the free use and "enjoyment thereof; but the said reservations shall re- "main theirs, until they choose to sell the same to the "people of the United States, who have the right to pur- "chase."

And by the Sixth Article the United States agreed to pay the Six Nations, yearly, four thousand five hundred dollars, and it has done so every year since—*the political department of the government thus recognizing the political existence of the Six Nations and of the Onondaga Nation.*

The details of these will be given later.

This and subsequent treaties are considered in *Fellows* v. *Blacksmith*, 19 How. 366, and *The New York Indians*, 5 Wall. 761, and in those cases, as well as in *The Kansas Indians*, 5 Wall. 737, *Pennock* v. *Commissioners*, 103 U. S. 44, 48, and *Jones* vs. *Meehan*, 175 U. S. 1, 30, it was held that where the government recognized the political existence of an Indian tribe or nation the States must so do.

As for the other three wampum records, they are given in the same picture—one is the record of the original agreement to make the League; another is the record of the *completed* League—this is the central one in the picture—the third is the record of the first coming of people with white faces.

They are the oldest records in North America.

By the laws of the League the Onondaga Nation was made the Keeper of the wampum records of the League, and it had always been the habit of that nation to appoint a single person, known as wampum-keeper, to keep them, and he was required to know, and be able to tell, their meanings. This wampum-keeper down to the time to which we are coming had, with one exception, always been an Indian and an Onondaga. That exception was Zeisberger, the celebrated missionary, who was made wampum-keeper by the Onondagas in 1754.

On the twenty-sixth of February, 1898, the governing council of the Onondagas, at a regular council, regularly called, passed a resolution in the following words:

"*Resolved*, That the University of the State of New "York be and it hereby is elected wampum-keeper of the "Onondaga nation, with full power and it shall be its "duty to get possession of and safely keep forever all "wampums of the Onondaga nation and the Five nations "and Six nations and each of them."

And the record adds:

"Whereupon the University of the State of New York "was unanimously elected to the office of wampum-"keeper."

The University of the State of New York sued, with the Indians, for these wampums, bringing this suit. The question of the power of the University of the State of New York to accept and perform the duty will hardly trouble the Court.

The trial court, after finding that these wampums were league wampums (R. 155, 30–31), found as follows: (R.31.)

"*VI.—That at a time many years prior to the 10th "day of February, 1891, the ancient Confederacy above "referred to, composed first of the five and then of the "six tribes or nations of Indians above mentioned, was "dissolved and thereafter had no active or actual ex-*

"*istence. That its respective names had become associ-*
"*ated with a period long gone by: that the tribes of*
"*which it consisted had become separated, and to a large*
"*extent scattered and dispersed throughout the United*
"*States of America and the Dominion of Canada, and*
"*those who had remained in this country had become*
"*wards of the Government.*

"*VII.—That on and after the happening of the fore-*
"*going events, viz.: the dissolution and disruption of*
"*the said Iroquois Confederacy, the use of the wampum*
"*belts for any of the foregoing purposes for which they*
"*were originally prepared became obsolete. The wam-*
"*pum thereupon became nothiny more than curiosities*
"*and relics of a time, condition and confederation which*
"*had ceased to exist, and the office or position of wam-*
"*pum-keeper, so far as its original significance is con-*
"*cerned, became useless and was abrogated.*"

(R. 33.) "*That said University of the State of New*
"*York never was selected or 'raised up' to the position of*
"*'wampum-keeper,' and no official proceedings were*
"*ever begun on the part of any of the tribes of Indians*
"*which formerly composed said Iroquois Confederacy*
"*for the purpose of conferring any such position or*
"*office upon said University of the State of New York,*
"*assuming that there was at the time of said alleged*
"*proceedings any such official position.*"

And in his opinion the Justice who held the trial court said (R. 161): "Independent of defendant's contention, "that such duties would be quite outside of those for "which said University is supposed to have been organ-"ised, there seems to me to be difficulties with the "claim from the Indians' standpoint. In the light of "all the traditions, not to say romance, which have been "woven into this subject of Indian history, the idea seems "somewhat incongruous of the University of the State of

"New York as the final successor in a line of red-skinned "and pagan wampum keepers reaching back beyond the "days when Hendrik Hudson sailed up the North River.

"Tested also by the somewhat rigid and entirely un- "romantic rules of legal title, I am unable to find suf- "ficient proof that the proceedings taken by the Onon- "daga Indians were sufficient to confer the position of "wampum-keeper, assuming that there is such an one."

And the Appellate Division upon the appeal said (R. 176): "The only plaintiff which can by any possibility "maintain this action, therefore, is the University of the "State of New York. It undoubtedly has power to bring "actions generally. It is a corporation having power to "sue and be sued. It has a state museum under chapter "378 of the Laws of 1892, and an Indian section thereof, "under chapter 586 of the Laws of 1896; and it has "power under the statute to acquire title to such articles "as these wampum belts, and to recover possession "thereof by actions in the courts like the present one. "*It seems to us* RIDICULOUS, *however, to say that it* "*could be constituted a wampum-keeper of any Indian* "*tribe or confederacy.* IT WAS NOT AN INDIAN, and "had no statutory right or power to be constituted an "Indian or wampum-keeper, of the kind indicated by "the evidence given in the case. *This claim is not* "*worthy of any serious consideration.*"

And the Court of Appeals said (R. 189):

"We think the judgment appealed from should be "affirmed upon the ground that neither the Onondaga "Nation, nor the individual Indians named as plaintiffs, "had legal capacity to bring and maintain the action. "(*Strong* v. *Waterman*, 11 Paige, 607, *Seneca Nation* v. "*Christie*, 126 N. Y. 122; *Johnson* v. *Long Island* "*R.R. Co.*, 162 *ib.* 462).

"As to the University of the State of New York, one of

"the plaintiffs, the finding of fact by the trial judge
" 'that the University of the State of New York never
" 'purchased any or either of the wampum belts mentioned
" 'and described in the complaint, and that said Univer-
" 'sity of the State of New York never was selected
" 'or "raised up" to the position or office of "wampum-
" "keeper," and no official proceedings were ever begun
" 'on the part of any of the tribes of Indians which
" 'formerly composed said Iroquois Confederacy for the
" 'purpose of conferring any such position or office upon
" 'said University of the State of New York, assuming
" 'that there is or was, at the time of said alleged pro-
" 'ceedings, any such official position,' is supported by
"evidence, and the judgment having been affirmed at the
"Appellate Division, it is, therefore, conclusive upon us."

And this is *all* which that court did say.

THIRD HEAD. The Findings (R. 30).

"I.—That during a period of many years prior to the
"year 1713, there existed a Confederacy of Iroquois In-
"dians composed of the Onondaga, Oneida, Mohawk,
"Seneca and Cayuga tribes, designated in their own
"language as the Ho-de-no-sau-nee, but known and re-
"ferred to in history as the League of the Five Nations.

"II.—That thereafter and in or about the year 1713,
"another tribe known as the Tuscaroras was received into
"said Confederacy and thereafter the League was known
"and referred to as the League of the Six Nations.

"III.—That during the earliest period of the existence
"of said Confederacy, the Indians of which said League

"was composed made use of strings of wampum beads or "shells braided or pleated together in broad bands and "commonly known as wampum belts, as a means of com- "memorating and preserving the memory of important "events such as the making of treaties, the coming of the "white man, &c., and that while the League of the Iro- "quois was in active existence the tribes or members "thereof composing it employed this method of preserving "the history of the events which they conceived to be of "importance.

"IV.—That while such custom was in vogue the care "and custody of such wampum belts as were so used was "entrusted to the Onondaga Nation, which appointed one "of its members as an official sometimes designated as "the 'wampum-keeper,' whose duty was to preserve "the same and upon ceremonial occasions expound "them and emphasize their meanings and significance.

"V.—THAT THE WAMPUM BELTS MENTIONED AND "DESCRIBED IN THE COMPLAINT IN THIS ACTION CON- "STITUTED A PORTION OF THE WAMPUM BELTS AT ONE "TIME MADE AND POSSESSED BY THE LEAGUE AND USED "FOR THE FOREGOING PURPOSES.

"*VI.—That at a time many years prior to the 10th "day of February, 1891, the ancient Confederacy above "referred to, composed first of the five and then of the "six tribes or nations of Indians above mentioned, was "dissolved and thereafter had no active or actual exist- "ence. That its respective names had become associated "with a period long gone by; that the tribes of which it "consisted had become separated, and to a large extent "scattered and dispersed throughout the United States "of America and the Dominion of Canada, and those "who had remained in this country had become wards "of the Government.*

"VII.—That on and after the happening of the fore-
"going events, viz.: the dissolution and disruption of
"the said Iroquois Confedracy, the use of the wampum
"belts for any of the foregoing purposes for which they
"were originally prepared became obsolete. The wam-
"pum thereupon became nothing more than curiosities
"and relics of a time, condition and confederation which
"had ceased to exist, and the office or position of wam-
"pum-keeper, so far as its original significance is con-
"cerned, became useless and was abrogated.

"VIII.—That on the 10th day of February, 1891, and for
"many years prior thereto, one Thomas Webster, an
"Onondaga Indian, had became the owner and was in
"possession of several of the wampum belts above re-
"ferred to, including those enumerated in the complaint
"herein. That said Webster was not then, and never
"was, an incumbent of the office or position of wampum-
"keeper of the Onondaga Nation or of any of the indi-
"vidual tribes composing the Iroquois Confederacy, and
"that there was at that time no such official position
"known or recognized among the Indians composing any
"or either of said tribes or confederacy. That the in-
"dividual or personal ownership of said Thomas
" Webster in said wampum belts was recognized by the
"said several tribes which formerly constituted said
" League and by the individual members thereof, and
"that said tribes and Indians had long prior to
"that time ceased to treat or regard said wampum belts
"as the property of either the Onondaga Nation or the
" Iroquois League."

Italics and capitals mine.

FOURTH HEAD: The evidence on these two subjects:

First is the treaty of 1794, which contains the following:

"ARTICLE I.

"Peace and friendship are hereby firmly established, "and shall be perpetual, between the United States and "the Six Nations.

"ARTICLE II.

"The United States acknowledge the lands reserved to "the Oneida, Onondaga and Cayuga Nations, in the irre- "spective treaties with the State of New York, and called "their reservations, to be their property; and the United "States will never claim the same, nor disturb them or "either of the Six Nations, nor their Indian friends resid- "ing thereon and united with them, in the free use and "enjoyment thereof; but the said reservations shall "remain theirs, until they choose to sell the same to the "people of the United States, who have the right to pur- "chase."

By the sixth article provision was made for a payment of four thousand five hundred dollars yearly forever (Appendix, post p. 29).

This payment has been made every year since, the appropriation in the

Appropriation Bill of March, 1901

(31 Stat. at Large, p. 1064)

being in the following words:

"SIX NATIONS OF NEW YORK.

"For permanent annuity in clothing and other useful "articles, per sixth article of treaty of November elev- "enth, seventeen hundred and ninety-four, four thousand "five hundred dollars."

"Approved, March 3, 1901" (p. 1085).

There is an United States agent for this (1 Off. Reg. 772). And they are just as numerous as they were in the days of their great Indian Empire (R. 90).

Subsequent treaties made by the United States with these Nations are described by the Court, speaking by Mr. Justice Nelson, in the case of *The New York Indians*, 5 Wall., 761, 766, in the following words:

"These treaties are historical and need not be referred "to, beginning in 1784, and coming down to 1842. That "of 1794, entered into at Canandaigua, New York, "may be cited as a specimen. Third Article, 'The "'United States acknowledge all the land within the "'aforementioned bounds (which include the reserva- "'tions in question) to be the property of the Seneca "'Nation, and the United States will never claim the same "'nor disturb the Seneca Nation, * * * * in the "'free use and enjoyment thereof; but it shall remain "'theirs until they choose to sell the same to the people "'of the United States, who have the right to purchase.'"

These treaties expressly recognise the tribal or national existence of the Six Nations and the Oneidas, Onondagas, Cayugas, Senecas, Tuscaroras and St. Regis Mohawks.

It is needless to remind the Court that but *one* of the *eight* reservations was given up under these treaties, and that the Indians are there in New York yet.

The New York Indians, 173 U. S. 464.

The plaintiff read from Morgan's "The League of the Iroquois," published in Rochester in 1851 (the best authority) the following (R. 45).

"At the institution of the league fifty permanent

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"sachemships were created, with appropriate names; "and in the sachems who held these titles were vested "the supreme powers of the confederacy. To secure order "in the succession, and to determine the individuals en- "titled, the sachemships were made hereditary, under "limited and peculiar laws of descent. The sachems "themselves were equal in rank and authority, and instead "of holding separate territorial jurisdictions, their powers "were joint, and co-extensive with the league. As a "safeguard against contention and fraud, each sachem "was 'raised up' and invested with his title by a "council of all the sachems, with suitable forms "and ceremonies. Until this ceremony of confirma- "tion or investiture, no one could become a ruler. He "received, when raised up, the name of the sachemship "itself, as in the case of titles of nobility, and so "also did his successors, from generation to generation. "The sachemships were distributed unequally between "the five nations, but without thereby giving to either "a preponderance of political power. Nine of them were "assigned to the Mohawk nation, nine to the Oneida, four- "teen the Onondaga, ten to the Cayuga and eight to the "Seneca. The sachems, united, formed the council of "the League, the ruling body, in which resided the exec- "utive, legislative and judicial authority. It thus ap- "pears that the government of the Iroquois was an "oliarchy, taking the term, at least, in the literal sense, "'the rule of the few;' and while more system is ob- "servable in this than in the oligarchies of antiquity, it "seems also better calculated, in its framework, to resist "political changes.

"This specimen of Indian legislation is so remarkable "that a table of these sachemships, with their division "into classes, indicating certain inter-relations, hereafter "to be explained, is inserted in the Seneca dialect."

Then follows a list of fifty-one sachems. Second on the list is Hiawat-ha of the Turtles of the Mohawks.

"These titles or names were hereditary in the several "tribes of which each nation was composed. When an "individual was made a sachem, upon the death or de- "position of one of the fifty, his name was 'taken away' "and the name of the sachemship held by his predeces- "sors was conferred upon him. Thus, upon the demise "of the Seneca sachem, who held the title Ga-ne-o-di-yo, "a successor would be raised up from the Turtle tribe, in "which the sachemship was hereditary, and after the "ceremony of investiture the person would be known "among the Iroquois only under the name of Ga-ne-o- "di-yo. These fifty titles, excepting two, have been held "by as many sachems, in succession, as generations have "passed away since the formation of the League.

"The Onondaga nation, being situated in a central posi- "tion, were made the keepers both of the Council Brand "and of the Wampum, in which the structure and prin- "ciples of their government, and their laws and treaties, "were recorded. At stated periods, usually in the "autumn of each year, the sachems of the League as- "sembled in council at Onondaga, which was in effect "the seat of government, to legislate for the common "welfare. Exigencies of a public or domestic character "often led to the summoning of this council at extra- "ordinary seasons, but the place was not confined to "Onondaga. It could be appointed in the territory of "either of the nations, under established usages. Origi- "nally the subject of the general council was to raise up "sachems to fill vacancies. In the course of time, as "their intercourse with foreign nations became more im- "portant, it assumed the charge of all matters which con- "cerned the League. It declared war and made peace, "sent and received embassies, entered into treaties of "alliance, regulated the affairs of subjugated nations, re-

"ceived new members into the League, extended its pro-
"tection over feeble tribes, in a word, took all needful
"measures to promote their prosperity and enlarge their
"dominion.

"Notwithstanding the equality of rights, privileges and
"powers between the members of this body of sachems,
"there were certain discriminations between them which
"rendered some more dignified than others. The strongest
"illustration is found in the Onondaga sachem, To-do-
"da-ho, who has always been regarded as the most noble
"sachem of the League. As an acknowledgment of his
"eminence, two of the Onondaga sachems were assigned
"to him as hereditary councillors.

"At the establishment of the League, an Onondaga by
"the name of To-do-da-ho had rendered himself a potent
"ruler, by the force of his military achievements. Tra-
"dition says that he had conquered the Cayugas and the
"Senecas. It represents his head as covered with tangled
"serpents, and his look, when angry, as so terrible, that
"whoever looked upon him fell dead. It relates, that
"when the League was formed, the snakes were combed
"out of his hair by a Mohawk sachem, who was hence
"named Ha-yo-went-ha, 'the man who combs.' To-do-da-
"ho was reluctant to consent to the new order of things,
"as he would thereby be shorn of his absolute power, and
"be placed among a number of equals. To remove these
"objections in some measure, and to commemorate his
"magnanimity, the first sachemship was named after him,
"and was dignified above the others by special marks of
"honor; but such, however, as were in perfect consis-
"tency with an equal distribution of powers among all
"the sachems as a body. Down to the present day,
"among the Iroquois, this name is the personification of
"heroism, of forecast, and of dignity of character; and
"this title has ever been regarded as more illustrious than
"any other, in the catalogue of Iroquois nobility.

"To several other of these officers or names, particular "duties were affixed at the institution of the League. "For example: The Senecas were made the door- "keepers of the Long House; and having imposed upon "Do-ne-ho-ga-weh, the eighth sachem, the duty of watch- "ing the door, they gave to him a sub-sachem, or assist- "ant, to enable him to execute this trust. This sub- "sachem was raised up at the same time with his superior, "with the same forms and ceremonies, and received the "name or title which was created simultaneously with "that of the sachemship. It was his duty to stand behind "the sachem on all public occasions and to act as his "runner or attendant, as well as in the capacity of a "counsellor. Ho-no-we-na-to, the Onondaga sachem who "was made the keeper of the wampum, had also a sub- "sachem, or assistant. Several other sachems, to whom "special responsibilities were confided, were allowed sub- "sachems, to enable them to fulfill their duties, or per- "haps as a mark of honor. All of these special marks "of distinction were consistent with perfect equality "among the sachems, as members of one ruling body, in "the administration of the affairs of the League. When "their method of legislating is considered, this fact will "appear with greater distinctness.

"The laws explained at different stages of the cere- "monial, were repeated from strings of wampum into "which they 'had been talked' at the time of their en- "actment. In the Indian method of expressing the idea, "the string, or the belt can tell, by means of an inter- "preter, the exact law or transaction of which it was "made, at the time, the sole evidence. It operates upon "the principle of association, and thus seeks to give "fidelity to the memory. These strings and belts were "the only visible records of the Iroquois; and were of no "use except by the aid of those special personages who

"could draw forth the secret records locked up in their "remembrance.

"It is worthy of note, that but little importance was "attached to a promise or assurance of a foreign power, "unless belts or strings were given to preserve it in recol- "lection. Verbal propositions, or those not confirmed by "wampum, were not considered worthy of special preser- "vation. As the laws and usages of the Confederacy were "intrusted to the guardianship of such strings, one of the "Onondaga sachems, Ho-no-we-na-to, was constituted "'Keeper of the Wampum,' and was required to be versed "in its interpretation."

The wampum records being exhibited to the court, the plaintiffs read from the first volume of Clark's "History of Onondaga County," published in 1849, it being admitted that Mr. Clark was dead (R. 51), the following:

"Os-sa hin-ta, Captain Frost—This distinguished chief "of the Onondagas, who presided with great ability over "the councils of the nations from 1830 to 1846, possessed "a character and a name, which eminently deserves to be "remembered. He was a cousin of the celebrated Oun- "diaga, and a nephew of Kawictoda. He was distin- "guished for the nobleness of his character, the peculiar "fervidness of his eloquence, and his unimpeachable in- "tegrity—qualities which secured for him the unlimited "confidence of his nation. His most distinguished asso- "ciates have been Oh-he-nu (Captain Hannos), Oh-ka-a- "yunkg (Onondaga Peter), Ka-ha-yent (Captain Joseph), "O-gha-ta-kak (Captain Joseph 2d), *De-hat-ka-tons* (*Abram "La Fort*), *and Ut-ha-wah* (*Captain Cold*). *This latter*

"*for a long time was keeper of the council fire of the Six* "*Nations.*"

"The ancient Council-Fire of the Confederate Nations, "from time immemorial, had always been kept alive at "Onondaga, the Central nation of the Confederacy. "After their alliance with the English in 1665, the fires "of the United Councils of the two powers were kindled "at Albany, and there, according to the figurative man- "ner of Indian expression, was planted the great tree, to "which was fastened the chain of friendship. With "the close of the great council of 1775, that fire, which "had so long kept burning, was extinguished. It "was the last Indian council held at the ancient Dutch "capital. The great Council-Fire of the Six Nations was "was still kept alive at Onondaga till after the close of "the revolutinary war, at which time a portion of the "Onondagas took up their abode on the Buffalo Creek "Reservation, under the protection of the Senecas, and "there was established the Council-Fire of the Six Na- "tions. The Council-Fire was kept by Ut-ha-wah (Capt. "Cold), an Onondaga, and the Senecas appropriated a "mile square of land on their reservation, as a mark of "distinction to the chief who kept it. Efforts have often "been made by the Onondagas at home, to have the "council-fire restored to its ancient hearth, but always "without success until the Fall of 1847. The Onondagas "and Senecas on the Buffalo Reservation, seeing that "their lands were like to pass from them, and thereby "their removal become inevitable, after the death of Capt. "Cold, resolved to restore the sacred deposit to its ancient "site.

"We would here remind the reader that what is termed "the council-fire, is not, as is by many supposed, an "actual fire, kept constantly burning, but the place where "their national records are kept, and belts, the memorials "of treaties, deposited and preserved, and as such, the

" term is only used in a figurative sense. It is the place " where all the national councils assemble, and where is " retained the spirit and essence of their ceremonies and " institutions. Important Indian councils are often held " without actual fire.

" De-hat-ka-tons was at this time chosen keeper of the " council-fire of the Six Nations. *These archives consist " of various belts of wampum, some twenty-five or thirty " in number, which the author has had the satisfaction " of seeing (a sight rarely allowed a white man), with " explanations from the keeper. Here is shown a belt, " sixteen inches broad, by four feet long, representing " the first union and league of the Five Nations, and is " called the 'Carpet' foundation or platform, or as we " may better understand it, the constitution; literally, " something to stand upon.*"

" *The several nations are distinguished by particular " squares, and these are joined together bg a line of " white wampum, and united to a heart in the centre, " implying the union of hand and heart as one. In " connection with this is a second belt having the figures " of several chiefs wrought in the wampum, all holding " hand in a circle, which is to represent that there shall " be no end to this league.*"

" *On one end is figured the Long House, the great " Cabin which no new nation can enter until it has " erected some little cabins around it; that is, the nation " must perform some deeds worthy of note before it can " be entitled to admission to the Great League in the " Federation. Around this are five smaller cabins, " emblems of the original Five Nations, before the league " was formed, and on one side is a still smaller one, " wrought since the first, representiug the Tuscarora " Nation, which was admitted at a subsequent period. " Another long narrow belt having a cross at one end and " a long house at the other, a narrow white stripe con-*

" necting the long house and a large cross, was explained " as follows: 'Great many years ago,' a company " from Canada presented this belt, desiring that mis- " sionaries, from the Roman Catholic Church, might be " settled among the Five Nations, and erect a church at " Onondaga, and that the road should be continually " kept open and free between them."

" All the other belts were explained with particular " minuteness."

" The bag which contains these relics is of itself a " singular curiosity. It is made of the finest shreds of " elm bark, and a person without being apprised might " easily mistake it for the softest flax. Its capacity " would exceed a bushel. This bag is reputed to be as " old as the league itself, and certainly bears the marks " of great antiquity."

" The tubes or beads of wampum are of red, dark blue, " pale blue, black and white colors, made of conch shell. " They are about five-eighths of an inch long, about as " large as a small pipe-stem, and hollow, strung, woven " and wrought with sinews of deer and bark.

" The whole, to say the least, is a great curiosity, and " has undoubtedly been handed down from a remote " period. It is held as a sacred treasure, preserved " with great care, and looked upon with peculiar rever- " ence."

The court sustained the defendant's objection to the admission of the parts in italics and admitted the rest.

GENERAL JOHN S. CLARK

(the best living authority.)

In 1879 John S. Clark, the best living authority, saw the wampums in the possession of Thomas Webster, whom he was told was wampum-keeper, and photographed them. They were eleven in number, and they were "read" to him (R. 55–61). The pictures of his photographs facing pages 56 and 57 show that four of them were these wampums.

BAPTISTE THOMAS, *a chief of the Onondagas and treasurer of the nation.*

He says that he has known the eleven wampums, photographed by General Clark, for forty or fifty years, in the possession of the successive wampum-keepers (continuing the list given by Mr. Joshua V. H. Clark in his history) (R. 144–145).

GENERAL CARRINGTON

(who bought the wampums of Thomas Webster.)

He was employed to make the New York Indian part of the United States Census of 1890, and his report, *which*

was put in evidence by the defendant, and dated January, 1892, contains the following:

Extracts from Special Bulletin (Ex. A and 1.)

[Title] (R. 89–114)

"ELEVENTH CENSUS OF THE UNITED STATES.
"ROBERT P. PORTER,
"Superintendent.

"EXTRA CENSUS BULLETIN

INDIANS.

"The Six Nations of New York.
"Cayugas, Mohawks, Saint Regis, Oneidas, Onondagas, Senecas, Tuscaroras."

(Exhibit A and 1 (Census Report), page 447 (fols. 265, *et seq.*).

"THE SIX NATIONS OF NEW YORK: The story of the "Five, afterward Six, Nations, or, more properly, the "league of the Iroquois, no matter how or when told, "never loses its interest. The uncertainty and doubt sur- "rounding most North American Indian history are par- "tially removed from the Six Nations. They of all "American Indians have best preserved their traditions. "Besides, their system was so complete and their govern- "ment so unique and so well fitted to the people that "from the earliest European arrival they have been con- "stantly written about. Their small numbers, compared "with the enormous country they occupied and the gov- "ernment they originated, with their deeds of daring, will "always excite surprise. Their league, tribal and indi- "vidual characteristics, and personal strength of will, "together with their great courage and prowess, account

"for their success in war and the methods which brought
"comfort in peace.

"The Six Nations are to American Indian life what the
"Greeks and Romans in ancient history were to the
"nations bordering on the Mediterranean. Their general-
"ship in war was of the highest, their civilization and
"cultivation, for their surroundings, the most advanced,
"and their economies of life the most applicable and fit of
"all the American race within the present boundaries of
"the United States and Canada.

"They made war or peace with equal facility, holding
"with a death-grasp to their old ideas and traditions,
"conquering and absorbing tribes, and getting the control
"and government of the country from the new Carolinas
"on the south to the lakes on the north and the Missis-
"sippi on the west. The Mohawk war-whoop was the
"terror of aboriginal life, and the signal-fires of the
"Iroquois league, illuminating the hills and valleys of the
"Atlantic coast, meant danger to the outlaying tribes.

"Their phenomenal fighting capacity, coupled with the
"rapidity of movement and power of concentration of
"their fighting men, gave the impression of a vast number
"of warriors. It can be stated with almost a certainty
"that the league of the Iroquois since the advent of the
"European on the American continent and up to 1680
"never exceeded 15,000 persons, and it never had an
"available fighting force of more than 2,500 men; and
"the astonishing fact is presented by the census of 1890
"and the statistics of non-resident Iroquois tribes that
"the league of the Iroquois is stronger in 1890 than it was
"in 1660, when first estimated by competent Europeans.
"In 1660 it was estimated at 11,000; in 1890 it is 15,970.

"Reports of late years as to the condition of the Six
"Nations of New York have been contradictory, and
"many of them were evidently manufactured and given
"out by interested parties when legislation to affect those

" Indians was pending. *Considering the fact that no cor-*
" *rect census embracing their actual condition had ever*
" *been made up to 1890, great care was taken in laying*
" *out the details of the work for a census and in selecting*
" *the agents to execute it.*"

Page 2 of Ex. I and A; page 448 of C. R.:

"The struggle now within the Six Nations for control
" of their government lies between the pagan and christian
" elements, and, in addition, they have to war with the
" wiles of the white man. Official corruption has been
" noted in the past among those high in authority, but
" this is now being rapidly remedied. The Six Nations
" are in most danger from without. The pagans, as used
" here (meaning the old party), are those holding to the
" faith of their fathers and opposing the white man and
" his methods. The christian element means those who
" accept christianity as a doctrine. As far as personal
" morals and the daily life of most of these people are con-
" cerned, the difference is merely technical, and consists
" in definition, the word of a pagan being considered
" as good as that of a christian, and, in the view that
" the state has nothing to do with one's profession of
" creed, among the Indians a self-reliant pagan is pre-
" ferable to a dependent christian. In the League of the
" Iroquois the largest liberty of the person consistent
" with the safety of the league is permitted. From per-
" sonal independence and sense of manhood many of the
" Iroquois have never departed. The reservation Indians
" of the west are the reverse of this. They look upon the
" nation and the great father as providers and dispensers
" of food and clothing, and lean heavily upom them and
" the public treasury. The Six Nations of New York
" have generally asked the great father, the Congress,
" and the New York legislature to let them severally
" alone. *They have been in a measure let alone by the*

'*authorities, and the result is that they are self-sus-*
'*taining and much further advanced in civilization*
'*than any other reservation Indians in the United*
'*States, and as much so as an average number of white*
'*people in many localities.* They have borne the bur-
'dens of peace with equanimity, and met the demands
'of the war for the Union with patriotism and vigor.
'Envious Caucasians, hungering for the Indians' landed
'possessions in New York state, as elsewhere, have been
'active and earnest in efforts to absorb their sustenance.
'They have been kept from doing so thus far through
'the efforts of earnest and active fair-minded people,
'who have prevented their spoliation. The Six Nations
'have been charged with being pagans, heathens, and
'bad citizens generally, but investigation shows the
'latter charge to be false."

Page 3 of Ex. 1 & A; page 449 of C. R.: (R. 92.)

"*The law and facts show that the reservations of the*
'*Six Nations of New York, are each independent, and*
'*in some particulars as much sovereignties, by treaty*
'*and obligation, as are the several States of the United*
'*States.* The St. Regis reservation, however, differs
'somewhat from the others. The lands within these
'reservations, of course, partake of and carry with them
'the conditions of the grant. *These nations are anom-*
'*alies, and, with the exception of the Five Civilized*
'*Tribes in Indian Territory, who are each known by*
'*treaty as nations, are the only ones of like character in*
'*the United States.* They are in fact almost nations
'within a nation. They were created and grew more out
'of fear of the Indian, and the desire to get rid of and keep
'him at peace at any price, than as an act of justice. In
'Indian territory they are embarrassing to the National
'Government, and an eyesore to the people who desire to
'live there. In New York they are a wonder to the

"curious, and the expectant haven of hope to many "speculators.

"The end of the century will probably see the so-called "nations in Indian territory absorbed or dispersed, and a "marked change in the present Indian nations in New "York.

"The incidents of the enumeration of the Seneca nation "showed a strong desire on the part of the advanced por- "tion to break away from old-time ideas and to keep "abreast with their white neighbors. The entire re-organiz- "ation of the Iroquois Agricultural Society was a step for- "ward. A more important indication in the same direction "was that of the Spring election in May, 1891, when nearly "every person elected was able to speak and read the "English language, and embraced among their number "men of property and progressive tendencies."

"*The members of the Six Nations of New York resid-* "*ing on reservations or living in tribal relations, do not* "*vote at county or state elections, nor do they pay taxes* "*to the counties or the state. They are, therefore, Indians* "*not taxed. They have a constitution, and the Senecas* "*have a charter from New York as well as their own.* "*They are amenable to national and state courts or* "*laws only in respect of crimes,* except the Saint Regis "Indians, hereinafter noted.

"*If the Iroquois, native or foreign-born, want to be-* "*come citizens of the United States, they must renounce* "*allegiance to their own people; but if those of the Six* "*Nations in New York become such citizens they can-* "*not carry their real property interest with them so that* "*it will be subject to levy and sale for debt on contracts.* "*This, in fact, is at present a practical inhibition in* "*their way to citizenship. The several reservations be-* "*long to them (Saint Regis differs somewhat from the* "*others), and neither the State of New York nor the* "*United States can legally break them up without the*

"*Indians' Consent, or through conditions analogous*
"*to those of war. They have always been recognized*
"*as nations.*"

Page 4 of Ex. 1 & A; page 450 of C. R.: (R. 94.)

"*The conclusion is irresistible that the Six Nations are*
"*nations by treaty and law, and have long since been*
"*recognized as such by the United States and the State*
"*of New York, and an enlightened public will surely*
"*hesitate before proceeding to divest these people of long*
"*established rights without their consent—rights recog-*
"*nized and confirmed in some cases by the immortal*
"*Washington and by more than a hundred years of pre-*
"*cedents and legislation.*"

"PEACEMAKER COURTS: The peacemaker courts are "peculiar to the Seneca Indians of New York. They "exercise probate jurisdiction and jurisdiction over minor "offenses. Appeal may be taken to the council of the "Seneca nation proper on the Allegany and Cattaraugus "reservations, and to the separate council of the Tona-"wanda Senecas. The term of office of a peacemaker is "for three years, one being elected annually for each "reservation, but those of the Tonawanda band, as with "all its officers, have no official relation to the other "bands of Senecas.

"The president of the Seneca nation sits as judge upon "the impeachment of a peacemaker. Among the grounds "of impeachment is taking a bribe, or, by relationship "or otherwise, having interest in a case.

"Divorces, as well as probate matters, come before this "court."

Page 19 of Ex. 1 & A; page 461 of C. R.: (R. 95.)

"HISTORICAL OUTLINE."

"The retirement of the Indian westward within the "United States has been qualified by two historical

"factors. The first grew out of the unlimited and con-
"flicting sweep of British land grants, which involved
"subsequent conflicts of jurisdiction and corresponding
"compromises, the second was incidental to the passage
"of the ordinance of July 13, 1787, which organized the
"northwest territory. The first, especially in the adjust-
"ment of the claims of Massachusetts and New York, to
"the same lands, dealt with Indian titles and rights
"which neither party could wholly ignore. The white men
"had overlapped and practically surrounded certain inter-
"nal nations. *The United States followed the British*
"*precedent, recognizing the independent sovereignty of*
"*the five Nations* (a) *in New York, and the rival states*
"*of Massachusetts and New York made their adjust-*
"*ments upon the same general basis.*

"Unlike their less fortunate countrymen in the south-
"ern states the Five Nations inherited titles, which they
"fully maintained in spite of French invasion, compelling
"Great Britain to honor those titles in her settlement of
"issues with France. The French claim of discovery was
"not supplemented by one of conquest. The Iroquois
"confederacy successfully defended its ancestral homes
"against both Indian and civilized invaders, even before
"Plymouth and Yorktown were colonized or Hollanders
"occupied Manhattan Island. *At the establishment of*
"*the American republic the Five Nations were still too*
"*strong to be ruthlessly forced out of their surround-*
"*ings, and the sentiment of the American people, sup-*
"*ported by President Washington, completely sup-*
"*pressed any demonstration in that direction.* The
"campaign of General Sullivan was based upon hostile
"invasion by the Indians, and its settlement was treated
"as the end of a necessary war with contiguous states.

"(a) The Five Nations, or League of the Iroquois, became the Six Nations
"after 1713 by the admission of the Tuscarora Indians from North Carolina
"into the Union's confederacy."

"The ordinance of July 13, 1787, dealt with the Indian "upon the border, whose hunting range had no limit, and "whose home jurisdiction had no distinctive definition.

"The distinction between the early status of the New "York tribes and that of the western tribes is an import- "ant one in applying the facts obtained for the Eleventh "Census of the United States to the solution of the prob- "lem in future dealings with the Six Nations.

"*The Indians of New York, early recognized as an* "*independent body politic, too strong to be despised and* "*to be conciliated as allies against other enemies, have* "*been comparatively undisturbed by modern progress,* "*but which must inevitably resolve all purely tribal re-* "*lations into common citizenship. The pressure from* "*without has, in the main, been that of example and* "*ideas rather than that of force. The reduction of their* "*landed possessions and the modification of their gov-* "*ernmental forms and social usages have been matters* "*of negotiation, treaty, and friendly adjustment.* The "grant by King James I. of England to the Plymouth "colony, afterward known as Massachusetts, from the "Indian tribe of that name, and the grant of Charles II. "to the Duke of York covered in part the same lands, "involving questions similar to those which attend Vir- "ginia land grants, and all others which extended west- "ward to the Pacific Ocean at a time when the geo- "graphical status of lands 'westward' had no clear de- "scription.

"A brief reference to the substantial settlement of this "and other matters affecting the New York tribes is all "that is needed in this connection. *The numerous na-* "*tional treaties* and Acts of Congress *and other treaties* "*between the State of New York and the Six Nations,* "*which are matters of public record,* have been compiled "and published by the State of New York in a volume "entitled 'Report of special committee, appointed by the "assembly of 1888 to investigate the Indian problem of

"the State.' The documents occupy 320 pages, octavo "size. Additional printed matter of 804 pages embodies "the testimony taken by a special commission in prose- "cuting their inquiries, and an appendix to the volume "cites statutes and treaties which have historic relation "to the subject-matter."

Page 20 of Ex. 1 and A; page 462 of C. R.: (C. R. 97.)

"The tendency of attempted legislation and very pro- "nounced utterances from respectable sources have been "in the direction of an abrogation of all existing treaties, "with or without the consent of the Indians. All such "propositions will be confronted by a national judicial "negative, and no impatience with slow Indian develop- "ment can excuse the impairment of his substantial titles "and rights or the imposition of terms of conquest."

"ANTECEDENTS OF THE SIX NATIONS: It is impossible "to justly apply the tests of to-day without deference to "the antecedents of this people and that course of history "*which has perpetuated their independence*, while nearly "all of their contemporary tribes have diminished or dis- "appeared. The advent of the white man in the coloni- "zation of the Atlantic Coast was at a time when the "Iroquois confederacy of the Mohawk, Oneida, Onon- "daga, Cayuga, and Seneca nations had practically mas- "tered the Algonquin tribes, which in Canada, New "England, the middle colonies, and the west had long "girdled the New York tribes as a belt of fire. Unlike "the Algonquins, whose tribes had nothing to bind them "together but certain similar peculiarities of dialect and "jealousy of the Five Nations, the Iroquois (the Mo- "hawks, Oneidas, Onondagas, Cayugas, and Senecas) had "a constitutional bond of union, described by Lossing as "a 'barbaric republic, the Iroquois confederacy, existing "in the wilderness, simple, pure and powerful, with its "capital 100 miles from the sea, and unknown until

"Cartier sailed up the St. Lawrence, until Champlain "penetrated its forests, and Hudson discovered the beau- "tiful river that bears his name.'

" *The traditions of the formations of this league* " *are very old, systematic, and carefully preserved.* " The league was called Ko-no-shi-o-ni, the 'cabin build- "ers' or the 'long house,' of which the Mohawks held " the eastern and the Senecas the western door, with the " great council fire or federal capital among the Onon- "dagas. The words attributed to Hiawatha, 'the very " wise man,' mingled with much romantic story, are so " descriptive of the family peculiarities of the different " nations that they are worthy of notice in the briefest of " the two forms preserved among the people. The scene " of the conference was on the hill slope north of Onon- "daga lake, in the State of New York."

"The Words of Hiawatha.

" We have met, members of many nations, many of " you a great distance from home, to provide for our " common safety. To oppose those foes from the north " by tribes, and alone, would prove our destruction. We " must unite as a common band of brothers, and we shall " be safe.

" You Mohawks, sitting under the shadow of the great " trees, whose roots sink deep into the earth, and whose " branches spread over a vast country, shall be the first " nation, because you are warlike and mighty.

" You Oneidas, a people who recline your bodies " against the everlasting stone that cannot be moved, " shall be the second nation, because you give good " counsel.

" You Onondagas, who have you habitation at the " great mountain and are overshadowed by its crags, shall " be the third nation, because you are greatly gifted in " speech and mighty in war.

"And you Cayugas, whose habitation is in the dark "forest and whose home is everywhere, shall be the "fourth nation, because of your superior cunning in "hunting.

"And you Senecas, a people who live out in the open "country, and possess much wisdom, shall be the fifth "nation, because you understand the art of raising corn "and beans and making cabins.

"You five great and powerful nations must unite and "and have but one common interest, and no foe shall be "able to subdue us. If we unite, the 'Great Spirit' will "smile upon us. Brothers, these are the words of Hia-"watha. Let them sink deep into your hearts.

"In 1535, at the site of the future city of Montreal, "Carter made a vocabulary of Indian words, showing "that the Iroquois language was then spoken by the "Hurons, who were conquered or absorbed by the "Iroquois. The confederacy is held to have its origin "about this time. This league, purely aristocratic in "spirit, but republican and representative in form, was "not political, but chiefly for mutual defense. *The care-"fully preserved wampums of those early times will re-"ceive notice in another connection.* 'Each nation was "'distinct and independent as to domestice affairs,' "writes Lossing, 'but bound to the others by ties of "'honor and the general good.' Each had its principal "sachems or civil magistrates with subordinate officers, in "all 200, beside 50 with hereditary rights. These were "assigned as follows: To the Mohawks 9; to the Oneidas, "10; to the Onondagas, 14; to the Cayugas, 10, and to "the Senecas, 8. Each nation has subdivisions of "tribes or clans, such as Wolf, Bear, Turtle, Snipe, "Beaver, Deer, Hawk and Heron, 8 in all. The "insignia or totem (mark) of each was subsequently "placed upon treaties after the European style.

"These tribes or clans formed one of the closest "bonds of union among the confederated nations. In "effect, each tribe was divided in 5 parts, and one part was "located in each nation. The Mohawk Wolf regarded "the Seneca Wolf as his brother. Thus, if the nations "fell into collision it would have turned Bear against "Bear, Wolf against Wolf, brother against brother. "'The history of the Ho-de-no-sau-nee,' says Morgan, "'exhibits the wisdom of these organic provisions, for "'during the whole history of the league they never fell "' into anarchy nor verged upon dissolution from internal "'disorders. The whole race was woven into one great "'family of related household.' The 8 tribes were, "however, in two divisions of 4 each, the Wolf, Bear, "Beaver and Turtle forming one division, and the Deer, "Snipe, Heron and Hawk forming the other. Marriage "between members of the same division was nearly as "rigidly forbidden as between members of the same "tribe."

Page 21 of Ex. 1 & A.; page 363 of C. R.: (R. 101.)

"The league had a president with 6 advisers, and au- "thority to convene representatives of all tribes in cases "requiring concert of action. Merit was made the basis "and sole reward of office. Oh-to-da-ha, an aged On- "andagan, was the first president of the league. *The "mat upon which he sat is still preseverved with care, "and the buckskin threads upon which the shell and "stone beads were strung are still sound, presenting one "of the most beautiful relics of the history of the con- "federacy.*

"In the military department chiefs were elected for "special causes, nor did they hesitate in extreme cases "to depose the civil sachem to give greater force to bat- "tle action. The military service was not conscriptive, "but voluntary, although every man was subject to mili- "tary duty, and to shirk it brought disgrace.

" Most extraordinary of all, the matrons sat in council " with a substantial veto as to peace or war. ' With " these barbarians,' says the historian of New York, " ' woman was man's co-worker in legislation, a thing " ' yet unknown among civilized people.' Doctor Colden, " in his history of the five Nations, sagely suggests that " ' here we may with more certainty see the original " ' forms of government than in the most curious specula- " ' tion of the learned.' Such was their regard for the " rights of man that they would not enslave captives; " neither did they allow intermarriages among families " of the same clan. *This has been the prevailing law up* " *to the present time.*"

Page 24 of Ex. 1 and A.; page 465 of C. R.: (R. 102.)

" THE GOVERNOR TRYON MAP: The latter has historic " value from its description of the country of the Six " Nations, with part of the adjacent colonies, recogniz- " ing at the time the independent relations which they " sustained to Great Britain. The vast tract then con- " trolled by the Seneca Indians is clearly defined, and " the changes of 120 years appear more impressive when " the boundaries and condition of the present representa- " tives of the former Six Nations are brought into close " relation to the facts of to-day.

" AREAS OF THE SIX NATION RESERVATIONS IN NEW " YORK AND CORNPLANTER SENECA, IN PENNSYLVANIA.

	Acres.
" Onondaga	6,100.00
" Tonawanda	7,549.73
" Allegany	30,469.00
" Oil Spring	640.00
" Cattaraugus	21,680.00
" Tuscarora	6,249.00
" Saint Regis	14,640.00
" Cornplanter, in Pennsylvania	640.00
" Total	87,967.73

"The New York commission estimates the acreage of "the Onondaga reservation at 7,300. The Saint Regis, "with swamp land, is estimated at 15,280 acres.

"RESERVATION OF THE SIX NATIONS IN NEW YORK: "1890. The maps of the existing reservations, as defined "in 1890, locate each family, water course, and road, "developing, as if by accident, in the clustering of their "homes, the differences between those of each nation who "hold to the tradition of the father, and those who wel- "come the civilization and christianity of the white man.

"For a complete and full history of the original treaties "and authorities as to the legal status of the Six Nations "reservations in New York (beside the report of the New "York State commission herein referred to), see the "report prepared by Alice C. Fletcher in 1885 and a mono- "graph by Franklin B. Hough, of Lowville, New York, "on the Indian tribes of New York, both printed in Exec- "utive Document No. 95. Forty-eighth Congress, second "session, which are full and most valuable. The various "New York reports and especially that of the New York "commission, made in 1889, contain much of interest as to "the reservations of the Six Nations.

Page 25 of Ex. 1 & A.; page 466 of C. R. (R. 103):

"ONONDAGA RESERVATION: *An old wampum of 1608, "representing the Iroquois confederacy, has for its 'cen- "ter house,' to indicate the rank of the Onondagas, a "heart. On either side are joined two sister nations, "and although fewer in numbers at present than others, "the Onondagas are given the first place in illustration "of the Six Nations in 1890.*"

Page 33 of Ex. 1 & A., page 471 of C. R. (R. 104):

"ANCIENT AND MODERN GOVERNMENT, PROVISIONS "AND INCIDENTS:

"*The Iroquois league had its democratic and republi- "can elements, but the separate national governments*

"were essentially oligarchic. The only semblance of "written law was the wampum. It was the duty of the "'keeper of the wampums' to store all necessary facts in "his memory and associate them with the successive lines "and arrangements of the beads so that they could "readily be called to mind. At general councils the "wampums were produced, solemnly expounded, and "made reminders of history and duty.

"'Reading the wampums' became, therefore, a means "by which to perpetuate treaties, and the exchange "of wampums was an impressive occasion. Both "the Canadian and New York divisions of the Six "Nations retain as national heirlooms these evidences "of the chief facts in their natio..al life."

"THE ONONDAGAS RETAIN THE CUSTODY OF THE "WAMPUMS OF THE FIVE NATIONS AND THE 'KEEPER "OF THE WAMPUMS,' THOMAS WEBSTER, OF THE SNIPE "TRIBE, A CONSISTENT, THOROUGH PAGAN, IS THEIR "INTERPRETER" (R. 104).

"According to the Narrative of Indian Wars in New "England, the original wampum of the Iroquois, in "which the laws of the league were recorded, 'was made "'of spiral water shells, strung on deerskin strings or "'sinew and braided into belts or simply united into "'strings.' Mr. Hubbard describes the wampum as 'of "'two sorts, white and purple.' The white is worked "out of the inside of the great conch shell into the form "of a bead, and perforated to string on leather. The "purple is worked out of the inside of the mussel shell. "A single wampum representing the Onondagas by a "heart, in the centre of the league, and older than the set-"tlement by the white people, or, as claimed, dating back "to Champlain's invasion in 1608, contains over 6,000 "white and purple beads made of shell or bone. ANOTHER "OF LATER DATE, 6 FEET IN LENGTH AND 15 STRINGS WIDE, "AND CONTAINING 10,000 BEADS, REPRESENTS THE FIRST

" TREATY BETWEEN THE LEAGUE AND THE United States.
" IN THE CENTRE IS A BUILDING REPRESENTING THE NEW
" CAPITOL. ON EACH SIDE IS A FIGURE REPRESENTING
" WASHINGTON AND THE PRESIDENT OF THE LEAGUE,
" WHILE, HAND IN HAND, THE THIRTEEN COLONIES OR
" STATES, ON ONE SIDE SEVEN AND ON THE OTHER SIDE
" SIX, IN ALL FIFTEEN FIGURES, COMPLETE THE MEMORIAL
" RECORD. *The mat on which the president of the league*
" *(Ta-do-da ho) is supposed to have sat when the league*
" *was instituted, about the middle of the sixteenth cen-*
" *tury, and the suspended mat to keep off the dust, are*
" *still in good preservation. One mongrum represents the*
" *continuation of peace with seven Canadian tribes who*
" *had been visited by the Jesuits, having a cross for each*
" *tribe, and with a zigzag line below, to indicate that their*
" *ways had been crooked, but would ever after be as sound*
" *as the Cross. Still another memorial of days of craft*
" *and treachery, while the league was too feeble to take*
" *the field against the Algonquin tribes represents a*
" *guarded gate, with a long, white path leading to the*
" *inner gate, where the Five Nations are grouped, with*
" *the Onondagas in the centre and a safe council house*
" *behind all. There are eleven of these historic mongrums,*
" *each fraught with traditional story of persons and*
" *events.*

" DANIEL LAFORTE, WHO HAS BEEN CHOSEN AS
" PRESIDENT OF THE LEAGUE, AND ALSO OF THE ONONDA-
" GAS, AND ELSEWHERE REFERRED TO, HOLDS UNDER HIS
" THE WAMPUM, AS REPRESENTED BY THOMAS WESTON,
" " ARE GOVERNMENT ENOUGH FOR THE NATIONS, AND LAY
" " DOWN ALL THE RULES OF DUTY THEY ARE BOUND."

" *The fact that the people can have no key to their own*
" *laws, and that the dictum of the mongrum reader is*
" *binding just as his memory or interpretation of the*
" *emblem shall dictate, seems to weigh little with the*
" *pagan party. Notwithstanding the claims made that*

" the wampums can be read as a governing code of " law, it is evident that they are simply monumental " reminders of preserved traditions, without any " literal details whatever. As curious relics they are " valuable. Photographs of all the wampums were " obtained to accompany the report of the Six Nations " Indians, with the explanation of each as read by the " wampum keeper. The mat of the to-do-da ho and the " wing (mat) used by the headsman to shield him from " the dust while presiding at the council are well pre- " served. The first group, from left to right, repre- " sents a convention of the Six Nations at the adoption " of the Tuscaroras into the league; the second, the Five " Nations, upon 7 strands, illustrates a treaty with 7 " Canadian tribes before the year 1600; the third signi- " fies the guarded approach of strangers to council of " the Five Nations; the fourth represents a treaty when " but 4 of the Six Nations were represented; and the " fifth embodies the pledge of 7 Canadian 'Christian- " ized' nations to abandon their crooked ways and keep " an honest peace. Above this group is another, claiming " to bear date about 1608, when Champlain joined the " Algonquins against the Iroquois. The second group " includes, also in the center, the official memorial of the " organization of the Iroquois confederacy, relating back " to about the middle of the sixteenth century, and im- " mediately over that of 1608, suspended between the " 'turtle rattles,' which were used at the feather dance " at Cattaraugus January 21, 1891, is a ragged wampum " of unknown antiquity. ABOVE, AND CONTAINING THE " GENERAL GROUP, IS THE WAMPUM MEMORIAL OF THE " FIRST TREATY MADE BY WASHINGTON ON BEHALF OF THE " 13 ORIGINAL STATES AND PRESIDENT OF THE SIX NATIONS " AT THE NATIONAL CAPITAL.

(R. 107.)

"GOVERNMENT AND EXISTING CONDITION OF THE RESERVATIONS:

"To give a clear view of the government and present "condition of the reservations, they will be noticed in the "order already adopted.

"*The Onondaga Nation is governed by 27 chiefs* "all but 2 being of the pagan party; 2, however, are "sons of christian ministers, and others professed for a "time to be christians, but quietly rejoined old associa- "tions. Albert Cusick, lay reader in the Church of the "Good Shepherd, held the office of to-do-da-ho (presi- "dent) at one time, but was deposed on account of his "religion. Those who have thus resumed their former "political and social relations are among the most per- "sistent in opposing a change. Daniel LaForte, a genial "man in his own house, and once active in church work, "is one of this number. It is, nevertheless, true that "many of the most influential, whose property is gaining "in value and whose business gradually increases their "dependence upon the white people for a market and "like benefits, realize that their own interests would be "more secure under some recognized code of law for the "government of the nation.

"*The ruling chiefs, chosen by the females of the fami-* "*lies represented, as in very ancient times, are practi-* "*cally in office for life.* In case of a vacancy the suc- "cessor chosen may be under age."

Page 36 of Ex. 1 and A; not in C. R. (R. 108):

"It would be almost impossible for any community of "white persons, whether of a high or low social grade, "whether educated or ignorant, to live in peace under "the loose restraints which the Six Nations call their "governmental system, and yet there are very few disor- "ders, few crimes, and petty offenses against person or

"property are very infrequent. Pride in the old systems "of the confederacy and in the traditions and memories "of early times have much to do with the involuntary "respect paid to the chiefs, sachems or councillors, who "are officially recognized as their government by the re- "spective nations; but natural indolence or indifference "to the future, provided the immediate present be toler- "able has its effect, and suspicion that the white people "urge citizenship upon them for the purpose of a more "ready control of their lands prevents decided action "toward citizenship."

Page 37 of Ex. 1 & A; page 473 of C. R. (R. 108):

"The names of the present chiefs" (Onondaga, R. 108) "are as follows, those marked with a x being unable "to read or write: x Thomas Webster (Snipe), age 64; x "John Green (Wolf), 74; x Asa Wheelbarrow (Eel), 64; "Charles Green, 30; x William Hill, 52; John Hill, 56; "x Peter George (Eel), 38; John R. Farmer, 28; x James "Thomas, 42; George Vanevery (Snipe), 36; x Frank "Logan (Wolf), 35; William Lyon (Turtle), 50; x Bil- "lings Webster, 31; Daniel LaForte (Wolf), 58; x George "Crow (Wolf), 34; x Baptist Thomas (Turtle), 64; x "Abbott Jones, 76; x Charles Lyon, 57; x Andrew "Gibson (Beaver), 29; x Wilson Reuben (Beaver), 50; "Jacob Scanandoah (Beaver), 70; x George Lyon (Eel), "42; x Levi Webster, 35; Hewlett Jacobs (Eel), 48; "Jacob Bigbear (Turtle); John Thomas (Turtle), 30; "Enoch Scanandoah, 24."

Page 39 of Ex. 1 & A; page 474 of C. R. (R. 109):

"*The Tuscarora Indians were admitted to the Iro-* "*quois league on the ground of a common generic ori-* "*gin, retaining their own hereditary chiefs, but without* "*enlarging the original framework of the confederacy.* "They had authority to be represented and enjoy a nom- "inal equality in the councils. They are styled 'sons,'

"and in turn use the term 'fathers' in their official rela-
"tions with the league. No authority exists by which
"they can be disturbed by the league in the management
"of their own affairs. The prevalent opinion to the con-
"trary is an error. In the Revolutionary war and in the
"war of 1812 they were faithful to the white people, and
"in the war of the rebellion furnished a reasonable con-
"tingent of volunteers to the union cause.

"*Vacancies among the chiefs are filled by the women*
"*of the clans entitled to the appointment.* Here, as
"among the Onondaga and Tonawanda bands, the ruling
"chiefs arrogate and occasionally exercise the power of
"displacing chiefs by formal deposition, or make the
"place so uncomfortable as to force a resignation. It is
"a stretch of prerogative to exercise this power except
"for a cause that would require a substantial impeach-
"ment, but there is no method of redress, and the Indian
"dislike to bother about local legislation, even in their
"own behalf, represses organized effort to find a remedy."

Page 39 of Ex. 1 & A.; page 475 of C. R. (R. 109):

"The Saint Regis Indians formed part of the Seven
"Nations of Canada. In 1852 their numbers were 1,100,
"or nearly the present number of the American Saint
"Regis Indians. By a provision of the first constitution
"of New York, adopted April 26, 1777, no purchases or
"contracts for the sale of lands by the Indians since the
"14th day of October, 1775, were to be valid unless made
"with the consent of the legislature. Among the docu-
"ments in the possession of the nation at the present time
"none are more prized than the treaty made May 4, 1797,
"exemplified, signed and sealed by John Jay, Governor,
"February 28, 1800."

Page 40, Ex. 1 & A; page 475 of C. R. (R. 110):

"The peculiar credit which the Six Nations attach to
"all preserved treaties, however old or superseded, de-

" veloped during the census year a new departure in the " Saint Regis plan of self-government. The old or pagan " element among the Onondagas, supported by Chief " Daniel La Forte, *Thomas Williams, keeper of the* " *wampum*, and others, maintained that their rights to " lands in Kansas and similar rights rested upon *treaties* " *made between the Six Nations (exactly six) and the* " *United States, and at a general council, held in 1888,* " *the Saint Regis Indians were formally recognized as* " *the successors of the Mohawks, thus restoring the* " *original five, while with the Tuscaroras, maintaining* " *six.* The theory was that an apparent lapse from the " six in number would in some way work to their preju- " dice. The same elements at once proposed the revival " of the old government by chiefs, which had become ob- " solete among the Saint Regis Indians. A meeting was " held, even among the Cattaraugus Senecas, with the de- " liberate purpose to ignore or abandon their civilized, " legal organization as the Seneca nation and return to " former systems. The impracticability of such a retro- " gade movement did not silence the advocates for chief- " ship for the Saint Regis Indians. *The election through* " *families, after the old method, of 9 chiefs and 9 al-* " *ternate or vice chiefs was held, and these were duly* " *installed in office by a general council, representing* " *all the other nations.* Practically and legally they " have no power whatever."

Page 61 of Ex. 1 & A; not in C. R. (R. 111):

" Wampum associations must be exchanged for written " law, and irresponsible chiefs must be held to strict ac- " count under intelligent codes, voluntarily adopted, " under the sanction of the State, or by the interposition " of the State in behalf of the people, who have no power " to protect themselves."

Page 78 of Ex. 1 & A; page 496, C. R. (R. 111):

"The very names contrasted with those of other reser-
"vations, Webster, Hill, Thomas, Brown, Jones, Jacobs,
"and Lyons being English. Old John Adams, of the
"war of 1812, Abraham Hill, the honored Oneida chief,
"and *Chief Theodore (Thomas) Webster, keeper of the*
"*wampum*, bore their years with dignity, and were
"among the most interested of those present."

Page 79 of Ex. 1 & A; not in C. R. (R. 111):

"*The alleged absurdity of the Six Nations of New*
"*York (being a nation within a nation) does not change*
"*the fact or nullify the sequence of actual history.* This
"very fact opens to the Indian and to the white man a
"way of relief, without the impairment of treaties or the
"disregard of any rights whatever.

"*Accepting all that the most technical advocate of the*
"*Indians' claim to prolonged independence can advance,*
"a higher and equally consistent principle of inter-
"national law supplies the wholesome remedy.

"As contiguous nations must have political intercourse,
"and upon a basis of mutual benefit, so there must be,
"on the part of each, some representative authority to
"adjust conflicting issues between them. The absence of
"such authority, and the neglect or refusal of any people
"to place themselves within the range of mutual con-
"sideration of the rights of the citizens of both, is among
"all nations a *casus belli*. The remedy may not require
"arms, but a constraint equivalent to that of arms when
"actual rupture occurs is legitimate."

Page 80 of Ex. 1 & A, not in C. R. (R. 112):

"THE TITLES TO INDIAN LANDS: Independent of the
"pre-emption lien of the Ogden Land Company upon
"the lands of the Seneca nation, and absolutely as respects
"the Onondaga, Tonawanda, and Tuscarora Senecas, the

" Indians already hold their lands substantially in " severalty. The theory advanced by many that these " lands are so absolutely held in common that the people " have no stimulus to improve them is founded upon an " erroneous idea of law and fact. The same principle " that underlies the English and therefore the American " common law obtains here. It has been settled among " the Six Nations beyond question that occupation, build- " ing upon, and improvement of land by consent of the " authorities representing the whole people confer a title, " practically in fee simple, excepting that it is inalien- " able to a foreigner; but it may be conveyed or devised " within the nation, and that it is inheritable by the " immediate and natural heirs in absence of a will, " and that as a system, however crude in form, the dis- " tribution of land in case of death almost invariably " follows its natural and just direction. The exceptions " are not greater than in contests among the white " people.

" It is equally true that when a party without land " applies to the authorities for the formal allotment of " land for improvement and cultivation permission to so " select and improve land is almost always given. The " national title has itself been a guarantee to each in- " dividual occupant that this perfect title in the nation " is his to control as if he held a deed therefor, and that " his use and disposal of said land cannot be disturbed. " It is also true that there is public domain enough on " each reservation to give every family seeking it all the " land needed, and that the disinclination to work, to " improve land, and secure support therefrom is the only " barrier to a rightful possession and use of said land. It " is also a fact that this tenure is so fully recognized that " no body of chiefs or ruling representatives of the Six " Nations dare assert any right to disturb that tenure or " prevent its sale or devise by the tenant, and that every

"case, so far as known reported as a violation of this "right by the peacemaker courts or by other authority "upon the settlement of an estate or dispute as to ad- "joining boundaries or conflicting titles, has been adjusted "upon evidence, and not upon any assumption that the "title was disposable at the choice of said court or chiefs. "The judges and chiefs on each reservation unequivocally "disclaim such alleged authority, and any assertion of "the right would be ignored or resisted. Neither is there "any existing usage, method, or power by which an "assumption of authority so sweeping could be enforced."

Page 81 of Exibit 1 and A, not in C. R. (R. 113):

"THE NATURAL DISTRIBUTION.—The claim by some "that the land of the Six Nations shall be divided per "capita or per stirpes, in severalty, is a form of commun- "ism, ignoring all the just equivalent of honest industry "and asserting a prerogative of authority over the prop- "erty and fruitful labor that no government in contact "with the civilized world at present would dare assert, "much less attempt to exercise.

"There is not the faintest similarity between Indian "occupation of any western reservation and the titles of "the Six Nations to their lands. The United States and "the State of New York, without anticipating the para- "mount authority of the federal courts, have the physical "power to ignore treaties and contracts for which an ade- "quate consideration has been paid; but nothing less than "a casus belli, when all treaties end with conflict and "might, establishes its false code of right in a new adjust- "ment of relations between the parties, can furnish an "excuse for such legislation."

Then he has in the report a picture, which is in the Record, facing page 103. This picture is expressed to represent the "officers of the League of the Iroquois of "the United States," and the portraits of three of them are given who are thus described:

"Daniel La Forte (Ha-You-Ws-Esh), 'Intestine Bruiser,'
"Chairman of League and acting To-do-da-ho, Wolf Tribe,
"Onondaga.

"THOMAS WEBSTER
"(Ha-yah-du-gih-wah), 'Bitter Body,'
"KEEPER OF THE WAMPUM,
"Snipe Tribe, Onondaga.

"Jarvis Pierce (Jah-dah-dieh), 'Sailing uncle,' Clerk
"of Six Nations, Onondaga.

All this, of course, was in 1890.

General Carrington was a witness for the defendant in this case, and gave the following testimony (R. 73):

Q. Did you visit the Onondaga Nation or Tribe? A. At the Onondagas I found no relics of value until I called with President La Forte upon Thomas Webster to verify references made to him as the possessor of wampums. It was twice or three times of calling before the old man would show me the wampums——

"Q. When you say the 'old man,' you refer to Thomas
"Webster? A. Yes, sir; I was at the time occupying
"the house of Chief La Forte with my secretary. I told
"him of my inquiries made elsewhere and he said that he
"would secure me access to Webster's collection; that
"some of them he had a good many years, and he claimed

"that upon examining them he could read the ancient "history of the Six Nations. He said, 'Perhaps he "will spare you one or two. No one has any interest in "them now except himself, and he keeps them as relics "of old times.' He went to Webster and brought an old "valise, very dilapidated, and tied with a rope, which had "been under his bed, and we examined the wampums "together. A large number of beads were loose, and "he gave what, as far as he could, was his idea of "the original meaning of the wampums. I impressed "upon him as well as I could the importance of their "being safely preserved somewhere and that if he chose "to have me take charge of them, or of any of them, I "would guarantee that, either at Washington or else-"where, in some safe place, they would be carefully and "permanently preserved. After some reluctance he con-"sented to come into Syracuse and bring the valise and "give me permission to have photographs taken."

Mr. Paige: This is Webster? A. Webster.

"(Witness continuing) I did this so that in case he de-"clined to sell any to the Government I would at least "preserve the appearance of them. He entrusted me with "the valise, returned to the Reservation. I had them "photographed and returned them to him."

Mr. Paige: Is the picture, to face page 33 of the Bulletin, entitled "Historic Wampums — Six Nations," a copy of those photographs? A. The photographs in Bulletin, opposite page 33, entitled "Historic Wampums—Six Nations," are prints from those plates.

Q. And they include all of the wampums that he had? A. Yes, sir; that is all the wampums that were in the valise.

Q. That engraving represents all the wampums that were in the valise? A. Yes, sir.

Q. And one of them is pictured twice, being the lower one on the lower right-hand picture? A. Yes, sir.

"(Witness continuing) (fol. 222) Shortly after Chief La "Forte told me that Webster would dispose of a portion "of them; he was afraid that they would be lost or "stolen and he would bring them over and talk with me "about them. No funds had been placed at my disposal "by the Government——

"MR. DELEHANTY (interrupting): By the Government? "A. Yes; by the Government, but all expenses and pur- "chases were reported to Washington for allowance or "disallowance and payment. Mr. Webster at the time "was very poor, anxious for a horse and wagon, and told "me to take four or five of the wampums, and see what I "I could give him for them. The thirteen figures was the "wampum that seemed to me——"

"(Witness continuing) At that time I had no funds of "my own available, but felt confident that the expense "was within my instructions and would be allowed, and "I agreed to pay him as soon as I could get to Syracuse "and return $75.00, which he and the chief said he needed "to secure his horse and wagon outfit."

"MR. DELEHANTY:

"Did you give him the money? A. I paid him the "$75.00, and took his receipt.

"Q. You paid Webster the $75.00? A. Yes; in the "presence of Daniel La Forte, who witnessed his signa- "ture to the receipt.

"Q. Witnessed the signature on the receipt given to "you by Webster for the money? A. Yes, sir.

"Q. (Showing witness paper) Is that the signature of "Daniel La Forte on the receipt? A. Yes, sir.

"Q. Is that the mark of Thomas Webster? A. Yes, sir.

"*Mr. Delehanty:* I offer the receipt in evidence.

"The receipt is marked by the stenographer Exhibit "'B.'

"Mr. Paige reads the said receipt as follows:

"Received from
"seventy-five dollars, $75.00.

his
"THOMAS x WEBSTER.
mark.

"Witness,
"DANIEL LA FORTE.

"Written at the top are the words and figures: "'Syracuse, N. Y., Feb. 10, 1891,' which Gen. Car- "rington says he wrote in this morning.

"Witness: Yes, sir.

"MR. DELEHANTY:

"Q. The receipt reads; 'Received from "'$75.00.' "Will you explain why the person or body "from whom the money was received was left blank? A. "It was left blank until I could receive response from "Washington as to whether the purchase would be recog- "nized as an official purchase or only be treated as a per- "sonal purchase.

"Q. Did you ever receive any authority to have it recog- "nized as an official purchase? A. I did not; it was dis- "allowed. I was instructed to make any purchase if I "thought it best for the public care, but the government "would not refund me.

"Q. How long did you remain at the home of Daniel "La Forte on that occasion? A. I couldn't tell within "several weeks.

"Q. Several weeks? A. I forget whether it was six "or seven weeks; nearly two months.

"Q. During that time, or any other time, did Daniel "La Forte say to you that Thomas Webster held any "official position as wampum-keeper, or otherwise? A.

"No; Mr. Webster called himself wampum-keeper "because he was the only man that had the wampums "and kept them, and so cherishing the tradition as "wampum-keeper, and I treated him in my report "as wampum-keeper, but I did not know him officially "as such. Daniel La Forte treated Webster as tradition "treats a person who collects postage stamps and such "things, and as such is the possessor of national or family "association.

"Q. Did La Forte say to you that the Onondaga tribe "or nation was the owner of any these wampums? A. "He did not, and no Indian in Onondaga (and I saw "most of them) claimed that anybody but Webster had "absolute control of them. It never was true nor pre-"tended.

"Q. Did you at any time throughout your investiga-"tions, either in reply to any inquiries made by you "or otherwise, hear any Indian of the Six Nations make "any statement to the effect that the wampums were "anything else but curiosities or relics, or had at the "present time any other significance? A. Yes, sir. "Quite a good many of the Indians felt that Webster's "reading of them was not altogether fanciful but had "its historical value, and they were very glad that they "were going to be saved and kept somewhere and not "lost. It was said that Webster really seemed to have "second-sight and seemed to see things through those "wampums that others did not see—seemed to see "historical significance.

"Q. That is what La Forte said? A. Yes, Webster "seemed to see historical antecedents in these wampums.

"Q. That is what La Forte said? A. Yes, sir. In "other words, Webster's looking upon these wampums "was not considered merely a curious inspection but that "there was a history of a people involved in them, and "he seemed to get grotesque things out of them.

"Q. Did either Webster or La Forte say anything to "you in regard to where he had obtained those wam- "pums—this collection of wampums? A. Well, I think "in regard to one or two, I asked him how long—

"Q. (Interrupting) You say you asked La Forte how "long he had them? A. Yes, and he asked Webster and "my impression is that he had one or two of them for "quite a number of years, I don't know but he still, it "seems to me, as long ago as his father's time—his "father had them; that's my impression. One or two of "them he brought from Canada.

"Q. He also stated he brought them from Canada? "A. He got them in Canada.

"Q. Did he say he brought or bought them in Canada? "A. He got them in Canada.

"Q. One or two he got in Canada? A. Yes, sir.

"Q. Did he say whom he got those which he got in "Canada from? A. No. In dealing with Mr. Webster "and securing the wampums it will appear from my re- "port that I endeavored to give as much significance as "possible to those wampums in his father's hands for "the sake of verifying the general history of the Six "Nations.

"(folio 238.) Q. In your report you also state that they, "referring to the wampums, are simply monumental "reminders of preserved tradition without any literal "details whatever; as curios, and relics, they are valu- "able; will you state what you refer by that expression "—what do you mean by that expression? A. I mean "just what it says. The words "literal details" are not "by what I have said before about cryptic expressions.

"Q. In the affidavit which you notified on the applica- "tion for the appointment of a Receiver, which I have "here in my hands, you say that nobody among the "tribes, or any of them, so far as you were able to learn,

"disputed Webster's individual ownership of the wam-
"pums, is that a fact? A. I never heard it disputed.

"Q. And you say—you assert—that no one beyond
"Webster had any wampums, or claimed any right to
"any? A. That is true, no one other than Webster
"claimed right to the wampums held by him."

JOHN W. SANBORN,

a witness for the defendant, and who negotiated the sale of the wampums by Dr. Crane to the defendant, representing to Dr. Crane that he was selling them to the State of New York,

speaking of a time two years and a half after 1891, he says (R. 120):

"Are you able to say, from your knowledge and obser-
"vation and study of the affairs of these Indians, whether
"there is any such thing in existence at the present time
"as the Ho-de-no-sau-nee? A. From the information
"that I gathered among Indians there is only a misty fig-
"ment of it.

"Q. Did you ever see an Indian other than Webster
"and Buck who claimed that these wampum belts had
"any authority among the Indians, or that they were de-
"pended upon for their history or record? A. Webster
"told me——

"Q. Other than Webster? A. Indians, many of them,
"have stated on my inquiring, hat these were not
"authoritative any more; that they had changed their
"form of government.

"Q. Do you know whether or not the different Indian
"tribes here have changed their form of government to

"comply with the Indian law of the State, having a con-
"stitution and by-laws the same as are authorized under
"the law? A. The Senecas, both the Cattaraugus and
"Alleghany Senecas have one government, a republican
"form of government, patterned after ours. For the last—
"as I understand it—ten to twelve years, the Onondagas
"have been struggling into the same form of government.
"As to the other tribes the ancient form of government
"has never been abandoned; some of them are in a some-
"what chaotic state, the Onondagas in particular. Well,
"Daniel La Forte, whose Indian name is Te-hes-ha, stated
"to me these were relics now, sort of heirlooms, like old
"spinning wheels, old almanacs, &c. That was the state-
"ment he made to me. Thomas Webster said—— When
"I asked Webster to read these, explain the belts to me,
"I asked him if they were authoritative, and he said:
"'No; our people don't care anything about them any
"more; we don't use them.'"

On his cross-examination he said (R. 138):

"You said that the Onondagas were struggling to adopt
"some other form of government than their ancient style
"of government. Do you understand that the govern-
"ment is otherwise than by chief, as it has always been?
"A. It is by chiefs, and yet they have been attempting to
"introduce modern methods.

"Q. The government is still by chiefs, so far as you
"know? A. They have been making an effort——

"Q. Is the government by chiefs? Does anybody but
"a chief have any voice in the government, so far as you
"know? A. In the latter government they have——

Q. "Does anybody except the chief have any voice in
"the government of the Onondagas, so far as you know?
"A. Evidently not.

"Q. The chiefs are appointed as they always have
"been, are not they, so far as you know? A. They

"have adopted a constitution which is different from the "old form.

"Q. So far as you know, are the chiefs appointed as "they always have been? A. Not entirely.

"Q. What is the difference? A. They have adopted a "constitution—twelve to fourteen years ago.

"Q. Anything in the constitution about the appoint- "ment of chiefs? A. Yes, sir; there is an attempt to "cut loose from the old form of government.

"Q. Is there anything in the constitution about the "way the chiefs shall be appointed? A. I don't recall; "I haven't it with me; I have a copy of it at home.

"Q. But you don't recall? A. Not precisely.

"Q. If it is not in the constitution, is the chief appointed "in any other way than as he always has been? A. I "don't consider that they have——

"Q. Will you please answer my question? So far as "you know, if there is nothing in the constitution about "the appointment of chiefs, are chiefs appointed by the "Onondagas as they always have been? A. Not en- "tirely as they always have been.

"Q. What is the difference? A. The difference is, "within a few years they adopted a different form of "constitution.

"Q. Is that all the answer you have to my question? A. "I think that is all; yes, sir. If I had a copy of the "constitution here I could make it clearer."

The Constitution.

Well, we put in the constitution (R. 150). All the changes it makes are to provide for a president, secre-

tary, treasurer and marshal and to make eight chiefs a quorum in the Council, and Baptiste Thomas swears, and nobody contradicts him, that the chiefs are appointed just as they always were (R. 145).

Daniel LaFort.

Daniel LaFort's statement taken *ex parte* by Mr. Sanborn on the 30th of August, 1897, is put in evidence by the defendant (R. 125).

He begins by saying that he is "President of the Six "Nations of New York State Indians."

So that it is plain on the defendant's own showing, that the Six Nations still existed *on the thirtieth of August, 1897.*

He then says that he is "President of the Onondaga Nation."

So that it is plain, on the defendant's own showing, that the Onondaga Nation still existed *on the thirtieth of August, 1897.*

The only other thing in the statement bearing upon these matters is this (R. 126):

"The demand which Mrs. Converse makes (a copy of "which is hereto annexed) of the wampum belts de-"scribed in the letter (a copy of which is hereto annexed) "cannot be made on behalf of the Ho-de-no-sau-nee, for "the Ho de-no-sau-nee is the name given to the League "of the Six Nations (meaning the Long House). When "the Seneca Nation adopted a municipal form of govern-"ment a few years ago its connection with the League "ceased, and its interest in the wampum ceased also."

This of course shows that if the Senecas have dropped out of the League the other Five Nations are still going on with it—and of course the name of Ho-de-no sau-nee belongs as well to the League now as it did when it originally consisted of but five Nations.

Daniel LaFort signs himself to this statement as "President of the Six Nations of N. Y. State Indians, "and also President of the Onondaga Nation" (R. 127).

New York's Recognition of the existence of the Onondagas and the Six Nations.

At the last of the twentieth volume of Johnson's Reports are reported the judgments of the Court of Errors of New York of February, 1823. They are three in number, and in each case the Court speaks by Chancellor Kent, and they are his *last judicial* opinions. In one of them, *Goodell* v. *Jackson*, 20 J. R., 693, he said (p. 709): "The "*Oneidas* and the other tribes composing the Six Nations "of *Indians*, were, originally, free and independent "nations. It is for the counsel, who contend that they "have now ceased to be a distinct people, and become "completely incorporated with us, and clothed with all "the rights, and bound to all the duties of citizens, to "point out the precise time when that event took place. "I have not been able to designate the period, or to dis- "cover the requisite evidence of such an entire and total "revolution. Do our laws, even at this day, allow these "*Indians* to participate equally with us, in our civil and "political privileges? Do they vote at our elections, or "are they represented in our legislature, or have they any "concern, as jurors or magistrates in the administration "of justice? Are they, on the other hand, charged with "the duties and burthens of citizens? Do they pay taxes, "or serve in the militia, or are they required to take a "share in any of the details of our local institutions? Do

"we interfere with the disposition, or descent, or tenure "of their property, as between themselves? Do we prove "their wills, or grant letters of administration upon their "intestate's estates? Do our *Sunday* laws, our school "laws, our poor laws, our laws concerning infants and "apprentices, or concerning idiots, lunaties, or habitual "drunkards, apply to them? Are they subject to our "laws, or the laws of the *United States*, against high "treason; and do we treat and punish them as traitors, "instead of public enemies, when they make war upon "us? Are they subject to our laws of marriage and di- "vorce, and would we sustain a criminal prosecution for "bigamy, if they should change their wives or husbands, "at their own pleasure, and according to their own cus- "toms, and contract new matrimonial alliances? I appre- "hend, that every one of these questions must be an- "swered in the negative, and that on all these points they "are regarded as dependent allies, and alien communities. "It was, therefore, with some degree of surprise, that I "observed the Supreme Court laying down the doctrine "in this case, that these *Indians* of the six nations were "as completely the subjects of our laws as any of our own "citizens? In my view of the subject, they have never "been regarded as citizens or members of our body politic, "within the contemplation of the constitution. They have "always been, and are still considered by our laws as de- "pendent tribes, governed by their own usages and chiefs, "but placed under our protection, and subject to our "coercion, so far as the public safety required it, and no "further.

"The five nations once formed the fiercest and most "formidable confederacy of *Indian* republics ever known "in *North America:* and by their prowess and enterprise, "they held distant tribes of *Indians* under dominion and "tribute."

(p. 711.) "We have purchased the greater part of their "lands, destroyed their hunting grounds, subdued the "wilderness around them, overwhelmed them with our "population, and gradually abridged their native indepen- "dence. Still, however, they are permitted to exist as "distinct nations, and we continue to treat with their "sachems in a national capacity, and as being the lawful "representatives of their tribes."

(p. 711). "One community may be bound to another "by a very unequal alliance, and still be a sovereign state. "Though a weak state, in order to provide for its safety, "should place itself under the protection of a more "powerful one, yet, according to *Vattel*, (B. 1, ch. 1, s. 5 "and 6.) if it reserves to itself the right of governing its "own body, it ought to be considered an independent "state. There are several kinds of commission, says the "same jurist. (B. 1, ch. 16, s. 194.) The submission may "leave the inferior nation a part of the sovereignty, re- "straining it only in certain parts, or it may totally "abolish it, or the lesser may be incorporated with the "greater power, so as to form one single state, in which "all the citizens will have equal privileges. Now, it is "very apparent from our whole history, that the submis- "sion of the Six Nations has been of the former kind and "that, as an inferior nation, they were only restrained of "their sovereignty in certain respects. Though born "within our territorial limits, the *Indians* are considered "as born under the dominion of their tribes. They are "not our subjects, born within the purview of the law, "because they are not born in obedience to us. They be- "long, by birth, to their own tribes, and these tribes are "placed under our protection, and dependent upon us; "but still we recognise them as national communities."

Then, after citing a quantity of treaties made with the United States, he says (p. 715):

"It would seem to me to be almost idle to contend, in "the face of such provisions, that these *Indians* were citi- "zens or subjects of the United States and not alien and "sovereign tribes."

New York Statutes.

"THE INDIAN LAW."

Chapter 679 of the Laws of 1892, Volume 2, p. 1573.

"ARTICLE II.

"THE ONONDAGA TRIBE."

"§ 22. CUTTING AND REMOVING TIMBER.—No person "other than an Onondaga Indian shall cut or remove, "from the Onondaga reservation any tree, timber, wood, "bark or poles and no Indian shall cut any tree, timber, "wood, bark or poles for the purpose of sale or removal "from such reservation, nor shall sell, remove, cause to "be removed or aid in the removal from such reservation "of any trees, timber, wood, bark or poles, *except upon* "*the written permission of a majority of the chiefs of* "*the Onondaga tribe*, particularly specifying the quan- "tity and kind of trees, timber, wood, bark or poles to "be cut or removed."

"§ 24. LEASES.—An Indian residing on the Onondaga "reservation and a member of the Onondaga tribe, own- "ing or possessed of improved lands thereon may lease "such lands to white persons, for a term not to exceed "ten years; but no individual Indian shall have the right "to lease any lands used as a stone quarry. *A majority* "*of the chiefs of such tribe* may, by a written contract

" to be drawn under the direction of the agent of such " tribe and approved by his endorsement thereon, lease " the stone quarries and *national* lands of the tribe, the " expense of such contracts to be paid by the persons to " whom the lands shall be leased. Any such contract " without the consent of the agent shall be void."

The Indian Law was amended in twenty-eight particulars by Chapter 229 of the laws of 1893; in one particular by Chapter 1689, the Laws of 1896; in six particulars by Chapter 642 of the Laws of 1898; in one particular by Chapter 315 of the Laws of 1899; in six particulars by Chapter 253 of the Laws of 1900, and in two particulars by Chapters 296 and 329 of the Laws of 1902, but the above sections were not changed and are still in force.

On the twenty-seventh March, 1899, the Legislature of New York passed an act which contained the following:

(1 Laws of New York, 1899, p. 305.)

" Chap. 153, Laws 1899.

" AN ACT to collect and preserve from loss or injury " any and all wampums which the Onondaga nation of " Indians, or its wampum keeper, or any of the Ho-de-no- " sau-nee, otherwise known as the Five Nations, or the " Six Nations, or the Iroquois, is entitled to possess."

" SECTION 1.—The university of the state of New York, " which was duly elected to the office of wampum-keeper " by the Onondaga nation, on February twenty-sixth, " eighteen hundred and ninety-eight, and which by unani- " mous action of its regents on March twenty-second, " eighteen hundred and ninety-eight, accepted such elec- " tion as authorized to do by law, and which accepted the " custody of the wampums as formally transferred to the " chancellor as part of the exercises *and with the unani-* " *mous approval, both of the election and transfer, by* " *the council of the Five Nations, held in the senate*

"*chamber of the capitol at Albany on June twenty-sec-*
"*ond, eighteen hundred and ninety-eight, by duly chosen*
"*representatives of all the original nations of the Ho-de-*
"*no-sau-nee*, shall hereafter be recognized in all courts
"and places, as having every power which has ever, at
"any time, been exercised by any wampum-keeper of
"the Onondaga Nation, or any of the Ho-de-no sau-nee,
"otherwise known as the Five Nations, or the Six Na-
"tions, or the Iroquois, and shall keep such wampums in
"a fire proof building, as public records, forever."

It is true that this act also contained the following:

"§ 2. The provisions of this act shall not apply to the
"subject matter of any litigation now pending in any
"court of this state."

and that at the time of its passage this action was pending.

The above is all the evidence on this matter.

FIFTH HEAD.—The Appointment of the University.

The evidence is as follows:

Upon the trial the plaintiffs offered in evidence what they claimed to be certain proceedings of the governing council of the Onondaga Nation,

These alleged proceedings are printed in full in the Record (R. 62).

and the following things then happened (R. 61):

Mr. Paige: * * *

"I will offer in evidence minutes of a Council held by
"the Onondagas on the 26th of February, 1898.

"You do not object on the ground that the signatures "are not proved?

"*Mr. Delehanty:* No, I will admit that is A GENUINE "DOCUMENT, *and the genuine signatures are there.*"

Capitals and italics mine.

This "genuine document" recites that "at a council of "the Onondaga Nation" in Onondaga, "held pursuant "to call and notice given to all the chiefs"—there were present twelve chiefs including the president, secretary and treasurer of the nation, and that the following resolution was unanimously adopted—

"*Resolved*, That the University of the State of New "York be and it is hereby elected wampum keeper of the "Onondaga Nation, *with full power and it shall be its* "DUTY *to* GET *possession of and safely keep* FOREVER all "wampums of the Onondaga Nation and the Five Nations "and Six Nations and each of them.

"Whereupon the University of the State of New York "was unanimously elected to the office of Wampum-"Keeper."

And it is further said to be *a true copy from the minutes.*

And then follow the "genuine" signatures of the twelve chiefs.

Capitals and italics mine.

Then followed this (R. 66):

Mr. Paige: * * * *

"I will put in from the record book of the Onondaga "Nation the Constitution with which the Nation is at "present governed. I will have a copy sent to the stenog-"rapher. That will be Ex. 8."

This constitution is printed (R. 150). It contains the following:

"2nd. The sachem chiefs shall be enrolled in the Book "of Records, which shall be kept by the Secretary of the

"Nation in each meeting of the chiefs; roll shall be called "by the secretary of the nation, *eight* of their number of "the chiefs shall constitute a Quorum for the transaction "of national business;"

There is not anything else of importance to this case in it except that it provides for the offices of President, Secretary Treasurer and Marshall, and defines their duties.

We then called Baptiste Thomas, the treasurer of the Nation, who testified that the number of the chiefs was about twenty-four (24) (R. 146), and that the chiefs were appointed in the same way that they always had been (R. 145).

We had already proved and the trial court has found that the Onondaga Nation was the official custodian (R. 30).

The above is ALL *the evidence.*

It is thus gravely admitted upon the record that at a regular council—being the sole governing body of the Onondaga Nation—the university was directed and it was made its "DUTY to get possession of and safely keep for-"ever all wampums."

It has just been said that (R. 62) at a council of the Onondaga nation held at the house of Daniel La Forte in Onondaga on the 26th day of February, 1898, held pursuant to call and notice given to all the chiefs, the following resolutions were unanimously adopted.

"*Resolved*, That the University of the State of New York "be and it hereby is elected wampum keeper of the Onon-"daga nation, *with full power and it shall be its duty to* "*get possession of and safely keep forever all wampums* "*of the Onondaga nation and the Five nations and Six* "*nations and each of them.*

"Whereupon the University of the State of New York "was unanimously elected to the office of wampum-"keeper."

At their March meeting of 1898, which was upon the twenty-second of March, the following was done by the Regents, as appears by their minutes (R. 182):

"STATE MUSEUM

"Wampum. The secretary reported the unanimous "election by the Indian council of chiefs, of the Univer- "sity as permanent wampum keeper for all wampums of "the Five nations and Six nations.

"*Voted*, That the matter be referred to the museum "committee with power to act in securing the wampums."

In June a Regents' convocation was held in Albany at which were present Indians of all the Six Nations, and by the direction of Onondaga chiefs I presented publicly to the Regents the above resolution of the chiefs—the original paper—and the wampums, and there was a public acceptance by the Chancellor in the following words:

"Chancellor Upson—As Chancellor of the University— "permit me to accept this gift" (R. 183).

(Regents' Bulletin 45, of December, 1898, p. 430.)

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"Section 1.—The university of the state of New York, "which was duly elected to the office of wampum-keeper "by the Onondaga nation, on February twenty-sixth, "eighteen hundred and ninety-eight, and which by unan- "imous action of its regents on March twenty-second,

"eighteen hundred and ninety-eight, accepted such elec-
"tion as authorized to do by law, and which accepted the
"custody of the wampums as formally transferred to the
"chancellor as part of the exercises *and with the unan-*
"*imous approval, both of the election and transfer, by*
"*the council of the Five Nations, held in the senate*
"*chamber of the capitol at Albany on June twenty-sec-*
"*ond, eighteen hundred and ninety-eight, by duly chosen*
"*representatives of all the original nations of the Ho-de-*
"*no-sau-nee*, shall hereafter be recognized in all courts
"and places, as having every power which has ever, at
"at any time, been exercised by any wampum-keeper of
"the Onondaga Nation, or any of the Ho-de-no-sau-nee,
"otherwise known as the Five Nations, or the Six Na-
"tions, or the Iroquois, and shall keep such wampums in
"a fire proof building, as public records, forever."

It is true that this act also contained the following:

"§ 2. The provisions of this act shall not apply to the
"subject matter of any litigation now pending in any
"court of this state."

and that at the time of its passage this action was pending.

SIXTH HEAD: The way the wampums came to the defendant.

On the 10th of February, 1891 (fol. 227) General Carrington, being then in charge of the Indian part of the United States census, bought these four wampums from

Thomas Webster, the "wampum keeper" (R. 77), for $75 (R. 76). In so doing he represented to Thomas Webster that he—Carrington—was acting for the United States government, and this was his own belief.

Of this there is no doubt—(R. 73–77). He says, "they "were very glad that they were going to be saved and "kept somewhere and not lost" (R. 77).

However, his purchase was disallowed by his superiors (R. 76–77)—and he afterwards sold the wampums to the reverend Doctor Crane of Boston.

In the spring of 1883, Mr. Sanborn—the same Mr. Sanborn who got the statement from Daniel LaFort—was employed by the New York Commissioners of the Columbian Exposition as director of the Indian Exhibit (R. 116, 133). What occurred as to the wampums he thus relates —(R. 116–117):

"It was necessary to read up such works and refer- "ences as I could find, in order to make plans for the "bark houses; the construction of them was committed "to me——

"Q. Without interrupting——we want to get at the "wampum belts? A. I desired in those houses an ex- "hibit of those wampum belts. Dr. Crane, whom I "knew, wrote me that he had these belts, that he bought "them of Gen. Carrington, who bought them of the In- "dians. *He suggested in his letter it would be a proper "thing for them to be within the bounds of New York "State, that they belonged within the bounds of New "York State properly.* I laid this matter before Senator "McNaughton, and he took me into Mr. Thatcher's of- "fice, which was in the next room, and laid the matter "before him. *Mr. Thatcher stated he could not very well "see how money could be taken from the appropriation "made by the State, and yet wished that the wampum "belts might be brought back to the State.* My idea was

"that the Commissioners should buy the wampum or ar-
"range for the purchase in some way. Mr. Thatcher and
"Senator McNaughton held a few moments' conference
"together—I din't hear what they said—and Mr.
"Thatcher handed me a check. He asked me first what
"the price was. I told him what Dr. Crane's price was,
"$500, and he handed me the check.

"Q. Is that the check which you refer to? (Handing
"witness paper.) A. Yes, sir.

"(Check marked Ex. B, F. J. M.)

"ALBANY, N. Y., March 24, 1893.

"Albany City National Bank pay to the order
"of Oliver Crane, Esq., in full payment for wam-
"pum belt, Five hundred dollars 00/100 $500 dol-
"lars. JOHN BOYD THATCHER.

"Endorsed as follows: Pay to the order of
"Mrs. Sibilla Bailey Crane.

OLIVER CRANE.

"Pay to the order of Henry Bailey, SIBYLLA
"BAILEY CRANE.
"HENRY BAILEY
"ANDREAS BLUMM. (Bank Stamps.)"

"John Boyd Thatcher."

"Q. You sent to Dr. Crane? A. He requested me to
"send it to Dr. Crane.

"Q. Did you receive the wampum belt from Dr. Crane?
"A. Yes, sir. They were in the Art Museum at Boston.
"Dr. Crane was at Winter Park, Florida. He sent an
"order to the curator of the Museum to ship them to me.

"Q. You received them? A. Yes, sir.

"Q. Took them to Chicago? A. Yes, sir. I should
"say to Albany first, to Mr. Thacher, turned them over
"to him.

"Q. Were they afterwards exhibited at the Chicago

" Exposition during the whole time of the Fair? A. " Yes, sir, I suppose during the whole time. They were " exhibited. I don't know when they were put on exhi- " bition; I presume at the commencement.

" Q. They are the same wampum belts here in Court? " A. Yes, sir, they are."

" And at R. 131:

" Mr. Thatcher then handed me this check and said, 'You attend to this and send for the wampum belts.'"

" Q. So that the wampum belts had not been received " by you or by anybody? A. Not at that time.

" Q. Not at the time he gave you the check? A. No, " sir; immediately after receiving Dr. Crane's letter Sen- " ator McNaughton asked me to go to Boston and exam- " ine those wampum belts to make sure they were au- " thentic, and that the statement concerning them was " authentic, and that they were there as described.

" Q. Where were they? A. In the Boston Art Mu- " seum, loaned by Dr. and Mrs. Crane.

" Q. This was after you got the check? A. No, sir.

" Q. When was it? A. After I received the letter " from Dr. Crane, describing the belts quite fully, and " suggesting they ought to be within the bounds of New " York State. The Senator asked me to go down there " and examine them, take their measurements, get an " accurate description of them.

" Q. You did? A. I did so.

" Q. Then what did you do? A. I returned and laid " before him a description of the belts which I made. It " was immediately after that that the check was drawn, " after I reported on the belts.

" Q. After you reported on them, and before they had " been received? A. Yes, sir.

" Q. I read what purports to be a copy of a letter writ- " ten by you to Doctor and Mrs. Crane:

"'WORLD'S FAIR.
"Office of
"JOHN WENTWORTH SANBORN,
"Director-in-Chief
of the
"INDIAN EXHIBIT OF THE STATE
"OF NEW YORK
"at the
"WORLD'S COLUMBIAN EXPOSITION.

"THE CAPITOL, Albany, N. Y.....189..
"Naples, N. Y., March 7, 1893.

"DEAR FRIENDS,
"DR. AND MRS. CRANE:

"The precious wampum came in good order on Sat-
"urday and will soon be shipped with our other curi-
"osities to Chicago, and will add very much to the in-
"terest of the N. Y. Indian Exhibit. I will see to it
"that the descriptions are in larger type, and printed in
"fine style, giving the history of the past and the recent
"history as well, so as to set forth all the interesting
"facts in connection with the wampum.

"I enclose a form of receipt which, on receipt of the
"money due you, you may if you please sign unless the
"Senator should make out a form. It will not be neces-
"sary to make two copies except for historical interest."

"Concerning my type-writer, I would say it is a Rem-
ington, No. 2, and works perfectly and rapidly.

"I am to have a picture of these wampums taken, and
"engraved for insertion in my History of the Six Nations,
"and I shall there give the history of it and make note of
"our purchase of it from you and Mrs. Crane. I am
"almost engulfed with work, but it is a pleasure to stop
"to write to you.

"Sincerely yours,
"JOHN W. SANBORN.

"P. S. I did not date the receipt. I will leave that
"to you to do when the money arrives.

"Yours,
"J. W. S."

"Q. Did you write that letter? A. Yes, sir.

"Enclosed in it, as I am informed, was a receipt, of "which I am informed the following is a copy.

"RECEIPT FOR WAMPUM.

"WORLD'S FAIR
"Office of
"JOHN WENTWORTH SANBORN,
"Director-in-Chief
"of the
"INDIAN EXHIBIT OF THE STATE
OF NEW YORK
"at the
"WORLD'S COLUMBIAN EXHIBITION.

THE CAPITOL, Albany, N. Y.....189..

"Received from Hon. Donald McNaughton, Chief "Executive Officer of the Board of General Managers of "the New York Exhibit at the World's Fair, and John "Wentworth Sanborn, Director-in-Chief of the New York "Indian Exhibit at the World's Fair, acting for the State "of New York, Five Hundred Dollars ($500.00) for one "case of four Wampum Belts, as follows, viz.: One Belt "of dark wampum beads, representing the Confederation "organization of the Five Nations under Hiawatha; One "Belt representing the First Treaty stipulation between "the Six Nations and General George Washington pic- "turing in Wampum beadwork the Council House, Gen- "eral Washington, the O-do-ta-ho, or President of the "tribes, and thirteen representatives of the Colonies; also "two fragments of other Belts, one representing the first "approach to the Indians of the 'People with white faces,' "and the other a narrow belt representing the unity of "the Five Nations."

"Did you enclose that receipt in that letter? A. Yes, sir." and R. 138:

"I supposed that on behalf of the Commissioners Mr. "Thatcher had authorized the purchase by the State."

As the wampums were received in Albany on the *fifth* March—see letter (R. 132—and the receipt expressing

that the money was received from "Hon. Donald Mc-"Naughton" and "John Wentworth Sanborn" "acting "for the State of New York" went to Doctor Crane on the *seventh* of March—see letter and receipt (R. 132–3) —and Mr. Thatcher did not make his cheque until the *twenty-fourth* of March—see cheque (R. 117—it is plain *that Doctor Crane sold the wampums under the belief that he was selling them to the State of New York.*

Section 4 of Chapter 236, Laws of New York, 1892 (1, p. 488), provided as follows:

"§ 4. The general managers of the State shall, immedi-"ately after their appointment, and upon the call of the "governor, meet at the capitol in the city of Albany, and "organize as a board by the election of a president and a "vice-president. Three members of the board shall be a "quorum for the transaction of business. The board may "make rules and regulations for its government, and for "the government of the district boards, and of the chief "executive officer. But such rules and regulations shall "not conflict with the provisions of the act of congress "hereinbefore referred to, or the regulations adopted "thereunder, or with the rules and regulations adopted by "the World's Columbian Commission."

Section seven provided that the "total expenditures "to be incurred under this act shall not exceed the sum "of three hundred thousand dollars"; and it appropri-ated three hundred thousand dollars to be paid "upon "the requisition of the board of general managers, signed "by its president and secretary, accompanied by estimates "of the expenses for the payment of which the money so "drawn is to be applied."

Chapter 188 of the Laws of 1893 (1, p. 317) appropri-ated three hundred thousand dollars more "for the pur-"pose of carrying into effect the provisions of said act"

" (Chap. 236, Laws 1892) and defraying the expenditures " thereunder,"—the monies to be drawn in the same way.

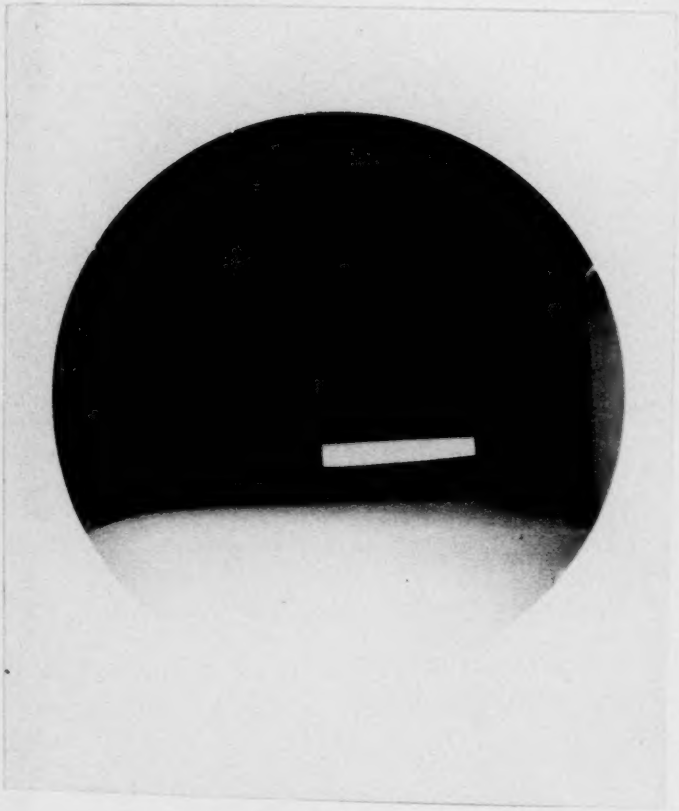
Chapter 497, Laws 1893 (1, p. 1076)—
Passed 29 April 1893.

" *Any property purchased* or provided *by the board of* " *general managers of the exhibit of the State of New* " *York at the World's Columbian Exposition*, or the " district commissioners of any judicial district of the " state, *for* use, *exhibit or display* in connection with the " exhibit from the State of New York at the World's " Columbian Exposition *and paid for from the appro-* " *priation provided by either* chapter two hundred and " thirty-six of the laws of eighteen hundred and ninety- " two, or chapter one hundred and eighty-eight laws of " eighteen hundred and ninety-three, may from time to " time, as may seem to said board best for the interests of " the state, be sold and disposed of by said board of gen- " eral managers."

Italics mine.

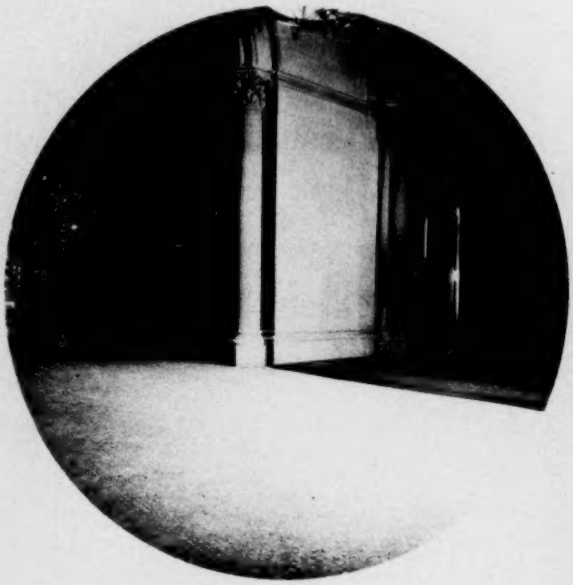
Mr. Thatcher had the spending of six hundred thousand dollars and he spent it all:—

and *it may be* that he could find it in his conscience to pay five thousand for the painting given opposite, although he could not find it in his conscience to pay five hundred dollars for the oldest records in North America, which as his own act shows, he believed to be well worth the money. This however, is not in the record.



JUNO RECEIVING.

The guides in the Capitol at Albany tell visitors that Mr. Thacher paid five thousand dollars for this picture.



SEVENTH HEAD: Facts as to the demand.

Mr. Thacher took the wampums to the Columbian Exposition and publicly exhibited them there as his own property—(see his letter (R. 15) and the report (R. 43–45).

Afterwards or on the nineteenth of December 1896, Mr. Dewey the Secretary of the University of the State of New York wrote to Mr. Thacher asking about the wampums (R. 22, 67). Mr. Thacher answered (21 December) asserting his own ownership in most unqualified terms (R. 4, 21). On the 23 December, Mr. Dewey wrote again (R. 22, 67), and Mr. Thacher replied—26 December—again asserting his own ownership (R. 5, 22, 65). Upon this Mr. Dewey wrote to him—18 January 1897—asking "to allow us to have them" (wampums) "by refunding what "you paid for 'them' (R. 24, 67). To this, so far as the record shows, there was no answer.

On the thirteenth day of July 1897, seven Onondaga chiefs—one less than a quorum (R. 150)—met at Onondaga and signed the paper printed at R. 152 authorizing Mrs. Converse to bring suit for the wampums—"and to use all "other means."

This was signed, among others, by Daniel LaFort, "President of the Six Nations of New York State Indians, "and also President of the Onondaga Nation" (R. 127).

Under this Mrs. Converse made the demand which is printed at R. 127—17th August, 1897—R. 126.

On the twenty-sixth of February 1898—the Council of the Onondaga Nation—twelve chiefs, one of whom was Daniel La Fort, being present—elected the University of the State of New York "wampum keeper" (R. 62)—Thomas Webster, whom we claim to have been the last preceding wampum keeper, having died the third of July, 1897 (R. 61).

By this election it was made the "duty" of the Uni-

versity of the State of New York "to get possession of "and safely keep forever all wampums of the Onondaga "nation and the Five Nations and Six Nations and each "of them" (R. 62).

And the twelve chiefs, of whom Daniel La Fort was one, made the University of the State of New York the attorney in fact of each of them and of the Onondaga Nation to recover the wampums by suit or otherwise "in the "name of the Onondaga nation or of any or all of the "sachems and chiefs undersigned either as such sachems "and chiefs or individually" (R. 63–64).

EIGHTH HEAD: Facts as to the Statute of Limitations.

Let us assume that the cause of action accrued when Webster sold, or attempted to sell, the wampums to General Carrington on the tenth of February, 1891.

Assuming also that Mr. Thacher can tack to his time the time of the possession of the wampums by General Carrington and Doctor Crane, and assuming that the action was begun when the new plaintiffs were brought in on the twentieth of December, 1898, the case stands this way:

Section 401 of the Code of Civil Procedure of New York contains the following: "Section 401. If, when "the cause of action accrues against a person, he is with-"out the state, the action may be commenced within the "time limited therefor, after his return into the state. "If, after a cause of action has accrued against a person, "he departs from the state and remains continuously "absent therefrom for the space of one year or more, or

"if, without the knowledge of the person entitled to "maintain the action, he resides within the state under "a false name, the time of his absence or of such resi- "dence within the state under such false name is not a "part of the time limited for the commencement of the "action."

The cause of action accrued against General Carrington tenth of February, 1891 (R. 76).

The action was begun twentieth of December, 1898 (R. 27).

Seven years, ten months, ten days.

7 y. 10 m. 10 d.

General Carrington left the State tenth of April 1891 and was out of it, except that he spent a week in Saratoga in July, 1892, until he delivered the wampums to Docter Crane. (Letters of 2 January 1899 and 16 March 1899 (fols. 254–259). He thus was out of the State continuously for more than a year. He went from Saratoga to Hyde Park and delivered the wampums to Doctor Crane. Doctor Crane resided in Boston and Florida until he died, and the cause of action against him arose when he was out of the State and he never came into the state afterwards. (Letters of 2 January 1899 and 16th of March 1899 (fols. 254–259).

Mr. Thacher's cheque is dated the 24th of March, 1893 (fol. 350), and it went to Dr. Crane in Florida (fol. 351). A cause of action could not therefore possibly have accrued

against Mr. Thacher until the twenty-fourth of March, 1893.

Deduct the time between the tenth of April 1891 when General Carrington left the state and the twenty-fourth of March, 1893 when a cause of action arose against Mr. Thacher. 1 y. 11 m. 14 d.

5 y. 10 m. 24 d.

Add seven days when General Carrington was in Saratoga..... 7 d.

31 d.

and the result is..... 5 y. 11 m. 1 d.

NINTH HEAD: Rulings as to evidence.

The trial court ruled out parts of what we offered from Clark's History of Onondaga County—which we claimed to be a general history of the Onondaga Nation—and we had shown that Clark was dead—but it admitted other parts. It admitted everything down to and including 1846—which did *not* include the names of the wampum keepers and the description of the wampums as Mr. Clark saw them in 1847. The parts ruled out are printed in *italics*. (R. 50–54).

BRIEF OF THE ARGUMENT.

I.

The political authorities of the Government recognising the national existence of the Six Nations and the Onondaga nation —all states must do so. The election or appointment by the Onondaga nation of the University of the State of New York as the depositary, or custodian, or keeper of the wampums was therefore valid and sufficient to enable it to sustain this action.

In the case of *The Kansas Indians* (5 Wall. 737), the head note contains the following:

"If the Tribal organization of Indian bands is recog-
"nized by the political department of the National gov-
"ernment as existing; that is to say, if the National gov-

"ernment makes treaties with, and has its Indian agent "among them, paying annuities, and dealing otherwise "with 'head men' in its behalf, *the fact that the primi-* "*tive habits and customs of the tribe, when in a savage* "*state, have been largely broken into by their intercourse* "*with the whites,—in the midst of whom, by the advance* "*of civilization, they have come to find themselves*—DOES "NOT AUTHORIZE A STATE GOVERNMENT TO REGARD THE "TRIBAL ORGANIZATION AS GONE, and the Indians as citi- "zens of the State where they are, and subject to its "laws."

Italics and capitals mine.

And the Court, speaking by Mr. Justice Davis, said (p. 756):

"The treaty of 1854 left the Shawnee people a united "tribe, with a declaration of their dependence on the "National government for protection and the vindication "of their rights. Ever since this their tribal organiza- "tion has remained as it was before. They have elective "chiefs and an elective council; meeting at stated "periods; keeping a record of their proceedings; with "powers regulated by custom; by which they punish "offences, adjust differences, and exercise a general over- "sight over the affairs of the Nation. This people have "their own customs and laws by which they are governed. "*Because some of those customs have been abandoned* "*owing to the proximity of their white neighbors*, may be "an evidence of the superior influence of our race, *but* "*does not tend to prove that their tribal organization is* "*not preserved.* There is no evidence in the record to "show that the Indians with separate estates have not "the same rights in the tribe as those whose estates are "held in common. Their machinery of government, "though simple, is adapted to their intelligence and "wants, and effective, with faithful agents to watch over

"them. If broken into, it is the natural result of Shaw-"nees and whites owning adjoining plantations, and living "and trafficking together as neighbors and friends."

And page 757:

"Conferring rights and privileges on these Indians can-"not affect their situation, *which can only be changed* "*by a treaty stipulation or a voluntary abandonment of* "*their tribal organization. As long as the United* "*States recognises their national character they are* "*under the protection of treaties and the laws of Con-*"*gress*, and their property is withdrawn from the opera-"tion of State laws."

Italics and capitals mine.

The New York Indians, 5 Wall. 761

(reversing *Fellows* v. *Denniston*, 23 N. Y. 420), was this:

An act was passed taxing lands occupied by the Senecas which, however, contained this proviso (p. 746)—"PRO-"VIDED, *That no sale for the purpose of collecting said* "*taxes shall in any manner affect the right of Indians* "*to occupy said lands.*"

The Court, speaking by Mr. Justice Nelson, said: (1866, p. 766)

"This last section furnishes, doubtless, a solution of "what we must otherwise regard as a very free, if not "extraordinary, exercise of power over these reservations "and the rights of the Indians, so long possessed and so "frequently guaranteed by treaties. These treaties are "historical and need not be referred to, beginning in 1784 "and coming down to 1842. That of 1794, entered into "at Canandaigua, New York, may be cited as a specimen. "Third article, 'The United States acknowledge all the "'land within the aforementioned boundaries (which in-"'clude the reservations in question) to be the property

" ' of the Seneca Nation, and the United States will never
" ' claim the same nor disturb the Seneca Nation * * *
" ' in free use and enjoyment thereof; but it shall remain
" ' theirs until they choose to sell the same to the people
" ' of the United States, who have the right to purchase,' "

(p. 768) " but the rights of the Indians do not depend
" on this or any other statutes of the State, but upon
" treaties which are the supreme law of the land; it is to
" these treaties we must look to ascertain the nature of
" these rights, and the extent of them."

(p. 770) " The tax imposed on the Buffalo reservation
" in 1840, 1841, 1842 and 1843, is not distinguishable from
" that imposed on the Alleghany and Cattaraugus reser-
" vations. The Indians were still in their ancient posses-
" sions and occupancy, and *till removed by the United*
" *States* were entitled to the undisturbed enjoyment of
" them."

(p. 771) " All agree that the Indian right of occupancy
" creates an indefeasible title to the reservations that may
" extend from generation to generation, *and will cease*
" *only by the dissolution of the tribe* or their consent
" to sell to the party possessed of the right of preemp-
" tion."

(p. 771) " Our conclusion is that the whole of the taxes
" assessed upon the three reservations (Buffalo Creek,
" Alleghany and Cattaraugus), are illegal and void, *as in*
" *conflict with the tribal rights of the Seneca* NATION *as*
" *guaranteed to it by treaties with the United States.*"

Italics and capitals mine.

In *United States* vs. *Holliday*, 3 Wall., 407, the Court, speaking by Mr. Justice Miller, said: (p. 419)

" The facts in this case certified up with the division of
" opinion, show distinctly that the Secretary of the
" Interior and the Commissioner of Indian Affairs have

" decided that it is necessary, in order to carry into effect " the provisions of the said treaty, that the tribal organi- " zation 'should be preserved.' In reference to all mat- " ters of this kind it is the rule of this Court to follow " the action of the executive and other political depart- " ments of the government, whose more especial duty it " is to determine such affairs. If by them those Indians " are recognized as a tribe, this Court must do the same. " If they are a tribe of Indians, then by the Constitution " of the United States, they are placed, for certain pur- " poses, within the control of the laws of Congress. This " control extends, as we have already shown, to the sub- " ject of regulating the liquor traffic with them. This " power residing in Congress, that body is necessarily " supreme in its exercise. That has been too often de- " cided by this Court to require argument or even refer- " ence to authority.

" Neither the Constitution of the State nor any act of " its legislature, however formal or solemn, whatever " rights it may confer on those Indians or withhold from " them, can withdraw them from the influence of an act of " Congress which that body has the constitutional right " to pass concerning them. Any other doctrine would " make the legislation of the State the supreme law of the " land, instead of the Constitution of the United States, " and the laws and treaties made in pursuance thereof.

" If authority for this proposition, in its application " to the Indians, is needed, it may be found in the cases " of the *Cherokee Nation* v. *The State of Georgia* (5 " Peters, 1) and *Worcester* v. *The State of Georgia* (6 " Peters, 515."

In *Elk* v. *Wilkins*, 112 U. S., 94, the Court, speaking by Mr. Justice Gray, said: (p. 100)

" The alien and dependent condition of the members of " the Indian tribes could not be put off at their own will,

" without the action or assent of the United States. They " were never deemed citizens of the United States, except " under explicit provisions of treaty or statute to that " effect, either declaring a certain tribe, or such member " of as chose to remain behind on the removal of the tribe " westward, to be citizens, or authorizing individuals of " particular tribes to become citizens on application to a " court of the United States for naturalization, and satis- " factory proof of fitness for civilized life; for examples of " which see treaties" (citing a large number of treaties " and cases).

In the *United States* v. *Kagama*, 118 U. S. 375, the Court, speaking by Mr. Justice Miller, said: (p. 383)

" It will be seen at once that the nature of the offence " (murder) is one which in almost all cases of its commis- " sion is punishable by the laws of the States, and within " the jurisdiction of their courts. The distinction is " claimed to be that the offence under the statute is com- " mitted by an Indian, that it is committed on a reserva- " tion set apart within the State for residence of the tribe " of Indians by the United States, and the fair inference " is that the offending Indian shall belong to that or some " other tribe. It does not interfere with the process of " the State Courts within the reservation, nor with the " operation of State laws upon white people found there. " Its effect is confined to the acts of an Indian of some " tribe, of a criminal character, committed within the " limits of the reservation.

" It seems to us that this is within the competency of " Congress. These Indian tribes ARE the wards of the " nation. They are communities *dependent* on the United " States. Dependent largely for their daily food. De- " pendent for their political rights. *They owe no alle-* " *giance to the States, and receive from them no protec-* " *tion*. Because of the local ill-feeling, the people of the

"States where they are found are often their deadliest "enemies. From their very weakness and helplessness, "so largely due to the course of dealing of the Federal "Government with them and the treaties in which it has "been promised, there arises the duty of protection and "with it the power. This has always been recognized by "the Executive and by Congress, and by this court, when-"ever the question has arisen.

"In the case of *Worcester* v. *The State of Georgia*, above "cited, it was held, that though the Indians had by treaty "sold their lands within that State, and agreed to move "away, which they had failed to do, the State could not, "while they remained on these lands, extend its laws, "criminal and civil, over the tribes; that the duty and "power to compel their removal was in the United States, "and the tribe was under their protection and could not "be subjected to the laws of the State and the process of "its courts.

"The same thing was decided in the case of *Fellows* v. "*Blacksmith and Others*, 19 How., 366. In this case, "also, the Indians had sold their lands under the super-"vision of the States of Massachusetts and New York, "and had agreed to remove within a given time. When "the time came a suit to recover some of the land was "brought in the Supreme Court of New York, which gave "judgment for the plaintiff. But this court held, on writ "of error, that the State could not enforce this removal, "that the duty and power to do so was in the United "States. See also the case of the *Kansas Indians*, 5 "Wall., 737; *New York Indians*, 5 Wall., 761.

"The power of the General Government over these rem-"nants of a race once powerful, now weak and diminished "in numbers, is necessary to their protection, as well as "to the safety of those among whom they dwell. It must "exist in that government because it never has existed "anywhere else, because the theatre of its exercise is

"within the geographical limits of the United States, be-
"cause it has never been denied, and because it alone can
"enforce its laws upon all the tribes."

And in *Jones* v. *Meehan*, 175 U. S., the Court, speaking by Mr. Justice Gray, said (p. 29):

"In one of the cases reported under the name of *The*
"*Kansas Indians* (1866), 5 Wall., 737, this Court,
"reversing the judgment of the Supreme Court of Kan-
"sas in *Blue Jacket* v. *Johnson County*, 3 Kansas, 299,
"held that lands which, pursuant to the treaty of
"May 10, 1854, between the United States and the
"Shawnee Nation of Indians (10 Stat., 1063) had been
"patented to a chief of that nation, were not subject to
"taxation by the State of Kansas so long as the tribal
"organization remained and was recognized by the poli-
"tical department of the Government; and Mr. Justice
"Davis, in delivering judgment, said: 'This people have
"'their own customs and laws by which they are gov-
"'erned. Because some of those customs have been
"'abandoned, owing to the proximity of their white
"'neighbors, may be an evidence of the superior influ-
"'ence of our race, but does not tend to prove that their
"'tribal organization is not preserved. There is no evi-
"'dence in the record to show that the Indians with separate
"'estates have not the same rights in the tribe as those
"'whose estates are held in common.' 'As long as the
"'United States recognize their national character, they
"'are under the protection of treaties and the laws of
"'Congress, and their property is withdrawn from the
"'operation of State laws' (5 Wall., 756, 757). See
"also the opinion delivered by Judge Woods, with the
"concurrence of Mr. Justice Harlan, in the Circuit Court,
"in *Waupenmanqua* v. *Aldrich* (1886), 28 Fed. Rep.,
"489, 495."

In *Talton* v. *Mayes*, 163 U. S., 376, the Court, speaking by Mr. Justice White, said (p. 383):

"It cannot be doubted, as said in *Worcester* v. *The* "*State of Georgia*, 6 Pet., 515, 559, that prior to the "formation of the Constitution treaties were made with "the Cherokee tribes by which their autonomous exist- "ence was recognized. And in that case Chief Justice "Marshall also said (p. 559):

" 'The Indian nations had always been considered as " 'distinct, independent political communities, retain- " 'ing their original natural rights. * * * The very " 'term "nation," so generally applied to them, means " 'a "people distinct from others." The Constitution, " 'by declaring treaties already made, as well as those to " 'be made, to be the supreme law of the land, has " 'adopted and sanctioned the previous treaties with " 'the Indian nations, and consequently admits their " 'rank among those powers who are capable of making " 'treaties.'

"In reviewing the whole subject in *Kagama* v. *United* "*States*, 118 U. S., 375, this court said (p. 381):

" 'With the Indians themselves these relations are dif- " 'ficult to define. They were, and always have been, " 'regarded as having a semi-independent position when " 'they preserved their tribal relations; not as States, " 'not as nations, not as possessed of the full attributes " 'of sovereignty, but as a separate people with the power " 'of regulating their internal and social relations, and " 'thus far not brought under the laws of the Union, or " 'of the State within whose limits they resided.'

"True it is that in many adjudications of this court "the fact has been fully recognized that although pos- "sessed of these attributes of local self-government, when "exercising their tribal functions, all such rights are sub- "ject to the supreme legislative authority of the United

" States, *Cherokee Nation* v. *Kansas Railway Co.*, 135 " U. S., 641, where the cases are fully reviewed. But the " existence of the right in Congress to regulate the man- " ner in which the local powers of the Cherokee nation " shall be exercised does not render such local powers " Federal powers arising from and created by the Con- " stitution of the United States. It follows that the " powers of local self-government enjoyed by the Cher- " okee nation existed prior to the Constitution, they " are not operated upon by the Fifth Amendment, " which, as we have said, had for its sole object to " control the powers conferred by the Constitution on " the National Government." * * * * " The ques- " tion whether a statute of the Cherokee nation which " was not repugnant to the Constitution of the United " State or in conflict with any treaty or law of the United " States had been repealed by another statute of that na- " tion, and the determination of what was the existing " law of the Cherokee nation as to the construction of " the grand jury, were solely matters within the jurisdic- " tion of the courts of that nation, and the decision of " such a question in itself necessarily involves no infrac- " tion of the Constitution of the United States. Such has " been the decision of this court with reference to similar " contentions arising upon an indictment and a convic- " tion in a State court. *In re Duncan*, 139 U. S. 449. " The ruling in that case is equally applicable to the con- " tentions in this particular arising from the record be- " fore us."

And in *Roff* v. *Burney*, 168 U. S. 218, the Court, speaking by Mr. Justice Brewer, said (p. 221):

" The condition of the Indians and Indian tribes within " the limits of the United States is anomalous. The tribes, " though in certain respects regarded as possessing the " attributes of nationality, are held to be not foreign, but

"domestic dependent nations. *Cherokee Nation* v. *Geor-*
"*gia*, 5 Pet. 1; *Worcester* v. *Georgia*, 6 Pet. 515; *Choc-*
"*taw Nation* v. *United States*, 119 U. S. 1; *Cherokee Na-*
"*tion* v. *Kansas Railway Company*, 135 U. S. 641.
"While the Indians and the territory which may have
"been specially set apart for their use are subject to the
"jurisdiction of the United States, and Congress may pass
"such laws as it sees fit prescribing the rules governing
"the intercourse of the Indians with one another and
"with citizens of the United States, and also the courts
"in which all controversies to which an Indian may be a
"party shall be submitted (*United States* v. *Rogers*, 4
"How. 567; *United States* v. *Kagama*, 118 U. S. 375;
"*Gon-shay-ee, Petitioner*, 130 U. S. 343; *Cherokee Na-*
"*tion* v. *Kansas Railway Company*, *supra*) the mere
"fact that a citizen of the United States has become a
"member of an Indian tribe by adoption may not neces-
"sarily cancel his citizenship. As said by Chief Justice
"Taney in *United States* v. *Rogers*, *supra* (573), 'what-
"'ever obligations the prisoner may have taken upon
"'himself by becoming a Cherokee by adoption, his re-
"'sponsibility to the laws of the United States remained
"'unchanged and undiminished.' Indeed by §439, chap.
"182, 26 Stat. at L. 99 provision is made for the naturali-
"ization of members of the Indian tribes in the Indian
"territory, with a proviso that the Indians who become
"citizens of the United States under the provisions of this
"act do not forfeit or lose any rights or privileges they
"enjoy or are entitled to as members of the tribe or na-
"tion to which they belong.

"Now, according to this complaint, plaintiff was a cit-
"zen of the United States, Matilda Bourland was not a
"Chickasaw by blood but one upon whom the right of
"Chickasaw citizenship had been conferred by an act of
"the Chickasaw legislature. *The citizenship which the*
"*Chickasaw legislature could confer it could withdraw.*

"*The only restriction on the power of the Chickasaw*
"*nation to legislate in respect to its internal affairs is*
"*that such legislation shall not conflict with the Consti-*
"*tution or laws of the United States, and we know of no*
"*provision of such Constitution or laws which would be*
"*set at naught by the action of a political community*
"*like this in withdrawing privileges of membership in*
"*the community once conferred.* The Chickasaw legis-
"lature by the second act, whose meaning is clear, though
"its phraseology may not be beyond criticism, not only
"repealed the prior act but canceled the rights of citizen-
"ship granted thereby, and further directed the governor
"to remove the parties named therein and their descend-
"ants beyond the limits of the nation. This act was not
"one simply taking effect as of the date of its passage,
"and then withdrawing rights admitted to have been
"theretofore legally granted, but was retroactive in its
"scope, and purported to annul and destroy all that had
"ever been attempted to be done in respect to the matter;
"whether any right of property could be taken away by
"such subsequent act need not be considered. It is
"enough to hold that all personal rights founded on the
"mere status created by the prior act fell when that status
"was destroyed. Plaintiff never took any oath of alle-
"giance to the Chickasaw nation; never in terms relin-
"quished his full rights as a citizen of the United States.
"Doubtless by intermarriage with one who was at the
"time by legislative act a Chickasaw citizen, he acquired
"the rights and privileges of a member of that tribe or
"nation, but when that which was the foundation upon
"which such acquisition rested was taken away by act of
"the nation, then all those rights and privileges ceased.
"The tie that bound him to the nation was his wife's cit-
"izenship. That tie the nation destroyed. Its destruc-
"tion released him. That such was the effect of this
"legislative act is established by the conduct of the

"Chickasaw government and all its officials, for they have "refused to recognize plaintiff as any longer a member of "the Chickasaw nation, and the courts of that nation "have declined to entertain jurisdiction of any suits "brought by him against a Chickasaw. The validity of "the act withdrawing citizenship from the wife of the "plaintiff, and the consequent withdrawal from plaintiff "of all the rights and privileges of citizenship in the "Chickasaw nation, has been practically determined by "the authorities of that nation, and that determination "is not subject to correction by any direct appeal from "the judgment of the Chickasaw courts."

Italics mine.

1. *The facts as to the existence of the Onondagas.*

Here is a case where a treaty was made by the United States with the Six Nations *before* the adoption of the Constitution (*Post*, Appendix, p. 24). That treaty expressly recognized the national existence of the Onondagas. The rule of *Talton* v. *Mayes* (163 U. S., 376), just quoted, therefore applies. The Constitution therefore "adopted "and sanctioned" that treaty, "*and consequently admits* "*their rank among those powers who are capable of* "*making treaties*"; and it "follows that the powers of "local self-government enjoyed by the" Onondaga "nation existed prior to the Constitution," and since they are not repugnant to the Constitution, nor to any act of Congress since passed, they still exist.

Then came the treaty of 1794, of which one of these wampums is the record, and that again recognized the national existence of the Six Nations and of the Onondagas (*Post*, Appendix, p. 26); and under that treaty the political authorities of the Government have recognized the national existence of the Six Nations and the Onondagas ever since

by paying the money which by that treaty it is to pay to those nations (*Ante*, p. 11, 31 Stat., 1064). *The Kansas Indians*, 5 Wall. 737 ("if the National government " makes treaties with, *and has its Indian agent among* " *them, paying annuities*, and dealing otherwise with " 'headmen,'" p. 737).

In 1802 the United States made a treaty with the Senecas, especially recognizing the existence of that nation as a nation, 7 Stat., 72.

In 1823 the Court of Errors of New York, then its highest court, expressly *held* that the Oneidas were a nation, *Goodell* vs. *Jackson*, 20 J. R., 693 (opinion quoted above, p. 56). And the opinion says the same of all the others of the Six Nations.

The United States treaty of 1838 expressly recognized the national existence of the Six Nations and of the Onondagas, and the treaty of 1842 the national existence of the Senecas. These are the treaties of which the Court, speaking by Mr. Justice Nelson, said in *The New York Indians*, 5 Wall. 761, 766: "These treaties are historical and need " not be referred to, beginning in 1784 and coming down " to 1842. That of 1794, entered into at Canandaigua, " New York, may be cited as a specimen." And in that case it held that those treaties were "the supreme law of the land" (5 Wall. 768).

In 1845 the Legislature of New York passed a law (Chap. 150, p. 146, Laws 1845) by which it expressly enacted that the Senecas should "be deemed to hold and " possess the said reservations *as a distinct community*, " and in and by the name of '*The Seneca* NATION *of* " '*Indians*,'" might sue in all courts.

In 1866 the Court, in the case of *The New York Indians* (5 Wall. 761), expressly held that the Senecas and Tuscaroras were nations, because it held that New York could not tax their lands even though the taxing law distinctly provided that it should not affect the Indians nor their

possession, and it inferentially held that all of the Six Nations were existing as nations, since it based its holding on the treaties made with them.

Criminal cases in which the individuals of the Six Nations are concerned are all in the courts of the United States. If the national existence had ceased they would all be in the state courts.

Pennock vs. *Commissioners*, 103, U. S., 44.

The *Vreeland* bill, which was to parcel out the lands of the Senecas among the individuals, with the object, doubtless, of getting them for sale, has just—last week—failed in the Senate, which, I submit, is a *legislative* recognition of the national existence.

It expressly appears in the proof that in 1888 a general ruling council of the Six Nations was held at which the Saint Regis Mohawks were formally admitted to the League as the successors of the original Mohawks who had all moved to Canada at the end of the Revolution and never came back (Above, p. 42, R. 110).

Here is the proof of the condition of the Onondagas in 1890 (Above, p. 39, R. 107):

"*The Onondaga Nation is governed by 27 chiefs* "all but 2 being of the pagan party; 2, however, are "sons of christian ministers, and others professed for a "time to be christians, but quietly rejoined old associa- "tions. Albert Cusick, lay reader in the Church of the "Good Shepherd, held the office of to-do-da-ho (presi- "dent) at one time, but was deposed on account of his "religion. Those who have thus resumed their former

" political and social relations are among the most per-
" sistent in opposing a change. Daniel LaForte, a genial
" man in his own house, and once active in church work,
" is one of this number. It is, nevertheless, true that
" many of the most influential, whose property is gaining
" in value and whose business gradually increases their
" dependence upon the white people for a market and
" like benefits, realize that their own interests would be
" more secure under some recognized code of law for the
" government of the nation.

"*The ruling chiefs, chosen by the females of the fami-*
" *lies represented, as in very ancient times, are practi-*
" *cally in office for life.* In case of a vacancy the suc-
" cessor chosen may be under age."

The names of the chiefs are given (*Above*, p. 40; R. 108), and with two exceptions the chiefs who voted at the Council of 1898 (R. 182) are of those named in 1890. The proof (General Carrington) is that in 1890 the Onondagas had a to-do-da-ho or president and a wampum-keeper just as always (R. 103; *Above*, p. 46).

In 1896 the Onondagas adopted a Constitution. This is printed at page 150 of the record, and the important parts of it are as follows:

" 1st. The Chiefs of the Onondaga Nation of Indians
" shall have power to elect President, Secretary, Treasurer
" and Marshall, and they shall be elected annually from
" amongst those number of the Chiefs of said Nation.

" 2nd. The Sachem Chiefs shall be enrolled in the Book
" of Records, which shall be kept by the Secretary of the
" Nation in each meeting of the Chiefs; eight of these
" number of the Chiefs shall constitute a Quorum for the
" transaction of national business; the chiefs whose age
" under twenty-one years of age shall not be entitle seat
" in Council; and to all Bills for the appropriation of pub-

"lic monies the assent of eight chiefs in Council shall be "necessary in order that the bill should become a law."

Baptiste Thomas (Say-hah-que) the treasurer of the nation swore that the chiefs were appointed in the same way in which they had always been (R. p. 145) and that there were twenty-four of them then living (R. 146).

In 1899 the legislature of New York passed an act which contained the following (Chapter 153, Laws 1899; *post* Appendix, p. 21; R. 184):

"Section 1.—The university of the state of New York, "which was duly elected to the office of wampum-keeper "*by the Onondaga nation*, on February twenty-sixth, "eighteen hundred and ninety-eight, and which by unani- "mous action of its regents on March twenty-second, "eighteen hundred and ninety-eight, accepted such elec- "tion as authorized to do by law, and which accepted "the custody of the wampums as formerly transferred "to the chancellor as part of the exercises *and with* "*the unanimous approval, both of the election and* "*transfer, by the council of the Five Nations, held* "*in the senate chamber of the capitol at Albany on June* "*twenty-second, eighteen hundred and ninety-eight, by* "*duly chosen representatives of all the original nations* "*of the Ho-de-no-sau-nee*, shall hereafter be recognized," etc.

It is true that that act also contained the following:

"§ 2. The provisions of this act shall not apply to the "subject mater of any litigation now pending in any court "of this state."

and that this action was then pending, but I suppose the act is evidence of the national existence of the Onondagas and the Six Nations;

And Mr. Sanborn, the defendant's other witness besides General Carrington, said as to this matter (R. 121):

"For the last—as I understand it—ten to twelve years,

"the Onondagas have been struggling into the same "form of government. As to the other tribes the ancient "form of government has never been abandoned; some "of them are in a somewhat chaotic state, the Onondagas "in particular."

BUT on his cross-examination he admitted and expressly stated that the only difference was the adoption of the Constitution (R. 138–139).

Well: We put in the Constitution (R. 150).

And they are just as numerous as they were in the days of their great Indian empire (R. 90).

It follows that the finding:

"*VI.—That at a time many years prior to the 10th "day of February, 1891, the ancient Confederacy above "referred to, composed first of the five and then of the "six tribes or nations of Indians above mentioned, was "dissolved and thereafter had no active or actual exist- "ence. That its respective names had become associated "with a period long gone by; that the tribes of which it "consisted had become separated, and to a large extent "scattered and dispersed throughout the United States "of America and the Dominion of Canada, and those "who had remained in this country had become wards of "the Government.* (R. 31.)

is without any evidence under it.

11. *That the university of the State of New York had and has power to receive the wampums on deposit and to recover them, for that purpose, by action, is very plain.*

It is a corporation forever with "power to sue and be sued" and to hold property (*post* Appendix, p. 16).

By Chapter 378 of the Laws of 1892, the following powers were conferred (*post*, Appendix, p. 17):

"§ 10. DEPARTMENTS AND THEIR GOVERNMENT.—The "state library and state museum shall be departments of "the University, and the regents may establish such other "departments as they deem necessary to discharge the "duties imposed on them by law. All University depart- "ments shall be under exclusive control of the regents "who shall have all powers of trustee thereof, including "authority to appoint all needed officers and employees; "to fix their titles, duties, salaries and terms of service; "to make all needed regulations; and to buy, sell, ex- "change or receive by will, gift, *or on* DEPOSIT, articles "or collections properly pertaining thereto;"

Chapter 586, Laws 1895, is as follows:

"AN ACT to provide for the collection of historical and "ethnologic records and relics of the American Indians of "the state of New York, and making an appropriation "therefor."

"Section 1. There shall be made, as the Indian section "of the state museum, as complete a collection as practi- "cable of the historical, ethnographic and other records "and relics of the Indians of the state of New York, in- "cluding implements or other articles pertaining to their "domestic life, agriculture, the chase, war, religion, burial "and other rites or customs, or otherwise connected with "the Indians of New York.

"§ 2. The trustees of the state museum (the regents) "shall appoint on its staff a competent curator*, without "salary, to make and arrange this Indian collection, and "for his necessary expenses, and for collecting or buying "specimens for the Indian collection, there shall be paid

*Mr. Richmond, the witness of that name in this case, was appointed and served without compensation until his death.

"by the treasurer, on the warrant of the comptroller, from "any money not otherwise appropriated, not to exceed "five thousand dollars."

Laws since, down to the appointment of the University, contain the following appropriations:

Chapter 791, Laws 1897, Section 1 (Vol. 1, p. 858).

"For additions to the Indian Museum, in accordance "with chapter five hundred and eighty-six of the laws of "eighteen hundred and ninety-six, providing that the "curator shall serve without salary, the sum of two "thousand dollars."

Chapter 606, Laws 1890, Section 1 (Vol. 2, p. 1436).

"For additions to the Indian Museum, in accordance "with chapter five hundred and eighty-six, laws of "eighteen hundred and ninety-six, provided that the "curator shall serve without salary, two thousand dol- "lars."

Chapter 569, Laws of 1899 (vol. 2, p. 1206).

"For additions to the Indian Museum, in accordance "with chapter five hundred and eighty-six laws of eighteen "hundred and ninety-six provided the curator shall serve "without salary, one thousand dollars."

III.—*The selection of the University by the Onondagas.*

The following paper was put in evidence—under the following circumstances (R. 61):

Mr. Paige: "I will offer in evidence minutes of a Council "held by the Onondagas on the 26th of February, 1898, "you do not object on the ground that the signatures are "not proved?"

"*Mr. Delehanty: No. I will admit that it is a genuine "document, and the genuine signatures are there.*"

"At a council of the Onondaga nation held at the house "of Daniel La Forte in Onondaga on the 26th day of "February 1898 held pursuant to call and notice given "to all the chiefs.

"*Present*

"Te-hes-ha	Daniel La Forte, *president*	
"Say-ha-que	Baptist Thomas, *treasurer*	
"An-wa-ga-yat	Orris Farmer, *secretary of the nation*	
"Ha-say-gwa-e-say	Jacob Skenandoah	*sachems and chiefs*
"So-day-qua-scum	Asa Wheelbarrow	
"Sa-da-qua-seh	Jacob Bigbear	
"Ha-e-ho	Levi Webster	
"O-gayis-qua	John Farmer	
"Ho-yo-ne-a-ne	William Webster.	
"Ga-na-ha-guh-yat	Wallace Carpenter	
"Ha-wen-jo-wah-e	Enoch Skenandoah	
"Hos-hay-qua	Charles Lyon	

"The following resolutions were unanimously adopted.

"*Resolved*, That the University of the State of New "York be and it hereby is elected wampum keeper of the "Onondaga nation, with full power *and it shall be its "duty to get possession of and safely keep forever all "wampums* of the Onondaga nation and the Five nations "and Six nations and each of them.

"Whereupon the University of the State of New York "was unanimously elected to the office of wampum-"keeper.

"A true copy from the minutes

"Say ha-que	Baptist his x mark Thomas
"Sa-da-qua seh	Jacob his x mark Bigbear
"Ha-wen-jo-wah-e	Enoch Scanandoah
"Ha-say-gwa e-say	Jacob A. Scanandoah
"Ha-e-ho	Levi his x mark Webster

" Ho-yo-ne-a-ne	William his x mark Webster
" O-gayis-qua	John R. Farmer
" Ga-na-ha-guh-yat	Wallace his x mark Carpenter
" So-day qua scum	Asa his x mark Wheelbarrow
" Ah-wa ga-yat	Orris Farmer
" Te hes-ha	Daniel La Forte
" Hos-hay-qua	Charles Lyon

" In presence of
" Harriet Maxwell Converse
" A. G. Richmond
" Edward Winslow Paige"

This "genuine document" recites that "at a council "of the Onondaga Nation" in Onondaga, held pursuant "to call and notice given to all the chiefs"—there were present twelve chiefs including the president, secretary and treasurer of the nation, and that the following resolution was unanimously adopted—

"*Resolved*, That the University of the State of New "York be and it hereby is elected wampum keeper of the "Onondaga Nation, *with full power and it shall be its* "DUTY *to* GET *possession of and safely keep* FOREVER all "wampums of the Onondaga Nation and the Five Na- "tions and Six Nations and each of them.

"Whereupon the University of the State of New York "was unanimously elected to the office of Wampum- "Keeper."

And it is further said to be *a true copy from the minutes.*

And then follow the "genuine" signatures of the twelve chiefs.

Capitals and italics mine.

Then followed this (fol. 197):

Mr. Paige: * * * *

"I will put in from the record book of the Onondaga "Nation the Constitution with which the Nation is at "present governed. I will have a copy sent to the sten- "ographer. That will be Ex. 8."

This constitution is printed at page 150 of the Record. It contains the following:

"2nd. The sachem chiefs shall be enrolled in the Book " of Records, which shall be kept by the Secretary of the " Nation in each meeting of the chiefs; roll shall be " called by the secretary of the nation, *eight* of there " number of the chiefs shall constitute a Quorum for the " transaction of national business;"

There is not anything else of importance to this case in it except that it provides for the offices of President, Secretary Treasurer and Marshall, and defines their duties.

We then called Baptiste Thomas, the treasurer of the Nation, who testified that the number of the chiefs was about twenty-four (24) (R. 146), and that the chiefs were appointed in the same way that they always had been (R. 145).

We had already proved and the trial court had found that the Onondaga Nation was the official custodian (R. 30).

The above is ALL *the evidence.*

It is thus gravely admitted upon the record that at a regular council—being the sole governing body of the Onondaga Nation—the university was directed and it was made its "DUTY to get possession of and safely keep for- "ever all wampums."

The Onondaga Nation has, we will say, some sixteen hundred members. Of course *all the sixteen hundred*

members cannot be, all of them, keeping *four* wampums all the time.

Still, it is the *duty* of the Nation to keep them safely. This being the case, cannot the governing council, even though it be composed of nothing as good as infants—since an infant can sue by a guardian while an Indian can not sue in any way—*cannot the Governing Council put them in a safe deposit company?*

If it can, it is with deference submitted, that it can "deposit" them with the University of the State of New York.

Upon this state of facts the Court of Appeals of New York gave judgment as follows (R. 189):

"As to the University of the State of New York, one "of the plaintiffs, the finding of fact by the trial judge "'that the University of the State of New York never "'purchased any or either of the wampum belts men-"'tioned and described in the complaint, and that said "'University of the State of New York never was se-"'lected or "raised up" to the position or office of "wam-"'pum-keeper," and no official proceedings were ever be-"'gun on the part of any of the tribes of Indians which "'formerly composed the Iroquois Confederacy for the "'purpose of conferring any such position or office upon "'said University of the State of New York, assuming "'that there is or was, at the time of said alleged pro-"'ceedings, any such official position,' *is supported by "evidence*, and the judgment having been affirmed at the "Appellate Division, it is, therefore, conclusive upon us."

It is plain that this is a holding that the Council of the Onondagas *had no power* to select a depositary for the wampums. It is not that the University could not take,

could not act and could not sue, BUT "*that it never was* SELECTED" for the position of wampum-keeper. As the action of the Council *selecting* it, or *voting its selection* is admitted on the record this can only mean that the action of the Council of the Onondagas *was void as beyond its power*, and thus the Federal question is right up, because the case was decided by the Court of Appeals upon that question *solely*.

And this is what the courts below meant also. Mr. Justice Hiscock, who held the trial Court said (R. 161):

"Independent of defendant's contention that such "duties would be quite outside of those for which said "university is supposed to have been organized, there "seems to me to be difficulties with the claim from the "Indians' standpoint. In the light of all the traditions, "not to say romance, which have been woven into this "subject of Indian history, the idea seems somewhat "incongruous of the University of the State of New "York as the final successor in a line of red-skinned "and pagan wampum-keepers reaching back beyond the "time when Hendrick Hudson sailed up the North River. "Tested also by the somewhat rigid and entirely un-"romantic rules of legal title, I am unable to find "sufficient proof that the proceedings taken by the "Onondaga Indians were sufficient to confer the position "of wampum-keeper, assuming that there is such an "one."

And the Appellate Division said (R. 176):

"The only plaintiff which can by any possibility "maintain this action, therefore, is the University of "the State of New York. It undoubtedly has power "to bring actions generally. It is a corporation having "capacity to sue and be sued. It has a state museum "under chapter 378 of the Laws of 1892, and an Indian "section thereof, under chapter 586 of the Laws of

"1896; and it has power under the statute to acquire "title to such articles as these wampum belts, and to "recover possession thereof by actions in the courts like "the present one. It seems to us *ridiculous*, however, "to say that it could be constituted a wampum-keeper of "any Indian tribe or confederacy. It was not an Indian, "and had no statutory right or power to be con- "stituted an Indian or a wampum-keeper, of the kind "indicated by the evidence given in the case. *This* "*claim is not worthy of any serious consideration.*"

All I claimed or had need to claim was this:—that the wampum records being the property of the Ho-de-no-sau-nee and committed to the custody of the Onondaga Nation—which was accordingly responsible for their safe-keeping—and since the Onondaga Nation, being composed of many, could only keep them safely by committing them to the care of some one person or thing—a safe deposit company, for instance—the safe deposit company would thus become the trustee of an express trust and could sue to recover the possession of the wampum records:

Smith v. *James*, 7 Cow, 328 (quoted below), and that it need not have described itself in the title as a trustee of an express trust—see *Stillwell* v. *Carpenter*, 62 N. Y. 639, 640; 6 Abb. N. C. 238, 263—and that the bailor might be a sort of infant without capacity to sue is no answer.

Jefferson County Bank v. *Townley*, 159 N. Y., 490, 499.

O'Brien v. *East River Bridge Co.*, 161 N. Y., 539, 549.

All this may be "ridiculous," as the Appellate Division

says, but I do, with deference, submit that it is most common and familiar law.

In this instance, the Onondaga Nation did not select a safe deposit company for the safe-keeping of the wampums—but it *did* select the University of the State of New York—and there is not a shadow of doubt but what the University had the right to take them and to sue for them (See the Statutes in Appendix, pp. 8 *et seq.*). Nor, as I submit, is it so entirely ridiculous that the Onondaga Nation should elect the University to the ancient office of wampum-keeper. At any rate—ridiculous or not—it is difficult to see what the Supreme Court of New York has got to do with it.

In the "Life and Times of David Zeisberger," by Edmund de Schweinitz, Phila., 1870, p. 217, it is said of Zeisberger in 1754:

"The most distinguished token of confidence, however, "was given him by the Grand Council, which deposited "its entire archives, comprising many belts and strings of "wampum, written treaties, letters from Colonial Gov-"ernors, and other similar documents, in the Mission "House, and constituted him the keeper of these impor-"tant records."*

The Onondaga Nation could have deposited the wampums in a safe deposit company or committed them to any one for safe keeping, and such a depositee would be a trustee of an express trust within the meaning of § 449 of the Code of Civil Procedure of New York.

Assume that the election of the University as an official —the wampum keeper—is not good: still, the resolution provides that "it shall be its duty to get possession of "and safely keep forever all wampums of the Onondaga "Nation and the Five Nations and Six Nations and each "of them" (R. 62).

* "Statements made at a missionary festival, at Bethlehem, as recorded "in the Bethlehem Diary, under date of August 2, 1755."

This makes it a trustee of an express trust within Section 449 of the Code of Civil Procedure of New York.

Myers *v.* Machado, 6 Abb. Pr. 198.
Harrison *v.* Marshall, 4 E. D. S. 271.

I do not claim any more for the Onondaga's bill of sale than that it gives to the University the right to use the names of the chiefs who signed it, and the name of the nation to recover the wampums and their respective shares in the ownership of the wampums.

The wampums are still the property of the Ho-de-no-sau-nee.

But the election of the University as wampum-keeper, ratified as it has been by a Six Nation Council—is good, and would have been good without that ratification—*and so long as the University of the State of New York exists* the wampums will remain where they ought to be—safe—and where they can be seen and used by the Indians, as they have been used.

When the University ceases to exist, if that time ever comes, the Onondagas can elect another wampum-keeper.

IV.—*The university can maintain this action although it has not yet been in possession of the wampums*—

because

In Smith *v.* James, 7 Cow. 328, the court, speaking by Mr. Chief Justice Savage, said (p. 329):

"I am free to admit that the consignees in this case "had, by the plaintiff's letter, such an interest in the "property consigned to them, as would have enabled "them to sustain the action. In *Fowler* v. *Down* (1 B. & "P. 47, chief justice Eyre says, 'it is not true that in "'property the party must once have had possession "'in order to maintain trover; for a factor to whom "'goods have been consigned, and who has never recovered

"'them, may maintain such an action.' But the action "cannot be maintained by both general and special "owner; and a recovery by one is a bar to an action "by the other."

V.—*And the question was reviewable in the Court of Appeals and is reviewable here.*

By the practice of New York

A finding by a court or a referee, made without any evidence to sustain it, is a ruling upon a question of law and an exception may be taken thereto, which is reviewable in the Court of Appeals.

The Constitution of New York now provides

(Art. VI, § 9): "After the last day of December, one "thousand eight hundred and ninety-five, the jurisdiction "of the Court of the Appeals, except where the judgment "is of death, shall be limited to the review of questions "of law. No *unanimous* decision of the Appellate Divi- "sion of the Supreme Court that there is evidence sup- "porting or tending to sustain a finding of fact or a "verdict not directed by the court, shall be reviewed by "the Court of Appeals."

Italics mine.

This however was not an unanimous affirmance within the meaning of that provision.

Mr. Justice McLennan sat in the court *but did not vote* (R. 167).

Warn v. *N. Y. C. & H. R. R.R. Co*—163 N. Y. 525—was thus:

The record was "Ordered, Justice McLennan sitting, "but not voting, and the remaining four judges concurring, "that the said judgment so appealed from be affirmed."

And the court, speaking by Judge Werner, said: (p. 526)—

"This is not a unanimous affirmance. The cases of "*Harroun* v. *Brush El. Light Co.* (152 N. Y. 212) and "*McDonnell* v. *N. Y. C. & H. R. R. R. Co.* (159 N. Y. 524) "are not in conflict with this decision. In the former "case, the record recited four justices as sitting, and they "all concurred; in the latter case all the justices com- "posing the court heard the argument, but one of them "died before it was decided. In this case one of the sit- "ting justices did not vote, although he had the right to "do so."

The matter is therefore reviewable and the practice of this Court leads to the same result. It is only where the finding of the court below is not "clearly in conflict with "the evidence" that the Court will not disturb it—*Illinois* v. *Illinois Central R. Co.*, 184 U. S. 77, 98.

II.

The Court erred in ruling out Clark's History of Onondaga.

This evidence was offered and is printed at pages 51 to 54 of the Record, inclusive, and is copied above, pp. 17–20. The court admitted the part which is printed in roman and ruled out that which is printed in italics.

His Honor's reason for the ruling of the court is thus given (R. 160):

"Some of these extracts offered in evidence relate to

"ancient times and are manifestly based upon hearsay "and tradition. Some, as those in reference to Os-sa-hin- "ta and his associate chiefs of the Onondagas, relate to "alleged facts of a comparatively recent date. Some, as "those descriptive of the various wampums and of the "bag in which they were kept, are apparently based "upon the personal observation of the historian and do "not relate to facts of general historical interest and "repute.

"It was conceded upon the trial that each of these "historians was dead, and no question was raised as to "their character and reliability as such.

"I think that the extracts from Morgan's history, and "those of the first class from Clark's were competent evi- "dence."

The parts which the court ruled out gave the names of the wampum-keepers and the description of the wampum-records as they were in 1847, describing, at least, two of the wampum-records in question and bearing directly upon the issues as to whether the Onondagas then had a national existence—a wampum-keeper—and these wampum records.

We submit that, if the book was admissible at all, one part of it was just as much admissible as the other, and that the matters of there being such things as wampum records and wampum-keepers were matters of general interest to the whole of the Ho-de-no-sau-nee within the meaning of the adjudged cases.

Morris v. *Harmer's Lessee*, 7 Pet. 554, 557.
Bogardus v. *Trinity Church*, 4 Sandford's Chancery (N. Y.), 633, 746.

III.

The individual Indian plaintiffs.

In *Felix* v. *Patrick*, 145 U. S. 317, 332; 36 Fed. 457, 461, the Court held that an individual Indian could sue in the courts of the State of Nebraska. The question was a question of laches—and the Court held that although the plaintiff could not have sued in the Courts of the United States, because of the want of citizenship, he could have sued in the courts of Nebraska.

Mr. Justice Brown cites cases (145 U. S. 317, 332), and Judge Brewer, in the Circuit Court, also cites cases (36 Fed. 457, 461).

Eddy v. *Lafayette*, 163 U. S., 456, was this:

An action was brought by "Sallie M. Hailey, an "Indian, and residing in the Indian Territory" (p. 458), and Ben F. Lafayette, a white man, against the receivers of "the Missouri, Kansas and Texas Railway," for negligently burning a lot of hay, which Mrs. Hailey claimed to own, and which Lafayette had cut for her by virtue of a contract with her which gave him a certain portion of the hay for the cutting (p. 459).

It appeared that Mrs. Hailey was a Creek Indian, residing with the Creek Nation upon the Creek reservation, and that the hay had been cut from the "public domain "or open lands of the Creek Nation, and not upon land "owned or possessed by plaintiffs or either or both of "them" (p. 460).

The plaintiffs had a verdict for $2,664. The action was brought in the United States court for the Indian Territory, and the judgment entered on the verdict having been affirmed by the Circuit Court of Appeals for the Eighth Circuit (4 U. S. App. 247), the defendants brought the case here.

The Court affirmed the judgment, and, speaking by Mr. Justice Shiras, it said (163 U. S., 465):

"But the evidence for the plaintiff tended to show that "the hay in question was cut and put up for Mrs. Sarah "M. Hailey, a citizen of the Creek Nation, who had con- "tracted with Lafayette to cut and put up the hay, and "that Lafayette was to have an interest in the proceeds "of the hay, in consideration of his services.

"There was no evidence tending to show that Mrs. "Hailey, in procuring the hay in question to be cut and "put up, was acting illegally or was in anywise a tres- "passer. And the statute above quoted (a statute of the "Creek Nation) implies that citizens of the Nation might "cut hay without limit from the common pasturage, as "it forbids only non-citizen traders from cutting hay "from the common pasturage; and we agree with the "court below that there is nothing in the present record "that would authorize us to say that the hay was gathered "on the public domain without license. No law of the "Nation was shown forbidding Mrs. Hailey from cutting "hay on land which she occupied in common with other "members of the Creek Nation."

The Kansas Indians, 5 Wall. 737, was this:

Three bills in equity, filed in the county courts of Kansas by Blue Jacket as representing the Shawnees; Yellow Beaver representing the Wea tribe, and Wan-zop-e-ah the Miamis, against the county commissioners of Johnson County and Miami County, to restrain these commissioners from selling lands for non-payment of taxes.

The county court dismissed the bills, "conceiving that "the lands were rightly taxed" (5 Wall. 737, 733), and on an affirmance of such dismissals in the Supreme Court of the state the cases were taken to the Supreme Court of the United States, which reversed them, on the ground that held (head note) the treaties with the Indians were

the supreme law of the land and that no state could in any way interfere with them, by taxing the lands or otherwise, nor fail to recognize the national or tribal existence of the Indian nation or tribe so long as the United States recognized it.

The cases in New York have been as follows:

In Jackson *v.* Goodell, 20 J. R. 188, the late Supreme Court held that the Oneida Nation had not capacity to sue.

The Court of Errors reversed the Supreme Court.

Goodell *v.* Jackson, 20 J. R. 693, Chancellor Kent delivering the opinion which has been quoted from above (p. 56).

In Strong *v.* Waterman, 11 Paige, 607, Chancellor Walworth held that individual Indians had capacity to sue.

Blacksmith v. *Fellows*, 7 N. Y., 401.

Blacksmith was a Seneca Indian residing on the Tonawanda reservation. Fellows entered on the land which Blacksmith occupied, on that reservation, and put Blacksmith off by force. Fellows claimed to own the land by virtue of a treaty, and a following deed, between the Seneca Nation, the United States and himself, by which the Seneca Nation had agreed to move, within five years, to lands granted them, for a consideration, by the Government, in what is now the state of Kansas, and the Seneca Nation accordingly deeded the whole of the Tonawanda reservation to Fellows. The five years had expired. The Seneca Nation had not moved. It has not yet moved and *it is there to this day.*

The government has just recently paid about a million

and a half of dollars to the Indians, because it sold those Kansas lands.—*The New York Indians*, 170 U. S., 1.

Blacksmith sued Fellows in trespass in the Supreme Court of New York.

On the trial, the "plaintiff having closed, the defend-"ants' counsel moved for a nonsuit, on the ground that "*the plaintiff*, AN INDIVIDUAL INDIAN, *could not main-*"*tain an action for breach of close*; the court, however, "denied the motion, and the defendants excepted." (7 N. Y., 401*a*.) Italics and capitals mine.

"The defendant's counsel also requested the court to "charge, that even if the defendants had shown no title "to the close in question in the defendant Fellows, still "*the plaintiff*, AN INDIVIDUAL INDIAN, *could not main-*"*tain the action of trespass for breaking and entering* "*the premises*. The learned judge, however, decided, "that the plaintiff being in possession could maintain the "action, and, therefore, refused so to charge; to which "the defendants took another exception." (7 N. Y., 408.) Italics and capitals mine.

Blacksmith had a verdict for $885 damages. The judgment entered upon this verdict having been *affirmed* at the General Term; Fellows appealed to the Court of Appeals—which also *affirmed* the judgment.

The court, speaking by Mr. Justice Edmonds, said: (7 N. Y., 413)

"The first point taken on the argument was, that the "plaintiff could not maintain an action, individually, "for trespass on lands belonging to the whole nation. "This might be true if the action was founded only upon "title. So, it might be true, if it was founded upon the "occupancy in common, which, we know, is usual with "the Indian tribes. But this action is not founded on "either basis, but upon the separate possession of the "plaintiff. The bill of exceptions shows that he was,

"alone and separately from all others, in possession of "the *locus in quo*, when the trespass was committed, and "that was enough to enable him to maintain an action "for a wrong done to that possession."

In the dissenting opinion—Mr. Justice Welles—it was said: (7 N. Y., p. 418)

"*The fact that he was an Indian*, it seems to me, *should* "*not* DISQUALIFY *him from seeking redress in our courts*, "*in the ordinary way, for such an injury.*"

Italics and capitals mine.

The court affirmed the judgment upon the merits upon the ground that a certain appraisement was necessary before the Indians could be removed.

Fellows thereupon brought the case here and the Court affirmed the judgment (*Fellows* v. *Blacksmith*, 19 How. 366) squarely upon the ground that, *the treaty being the supreme law of the land*, the performance of the treaty by the Indians could be compelled only by the United States—the Court, speaking by Mr. Justice Nelson, saying: (19 How. 372)

"We think, therefore, that the grantees derived no "power, under the treaty, to dispossess by force these "Indians, or right of entry, so as to sustain an action of "ejectment in a court of law; that no private remedy of "this nature was contemplated by the treaty, and that a "forcible removal must be made, if made at all, under "the direction of the United States;"

And in *Montauk Tribe* v. *Long Island R.R.*, 28 App. Div. 470, it was held that individual Indians had capacity to sue.

It seemed, therefore, at the time this action was begun, that either the Onondaga Nation or the individual Indian plaintiffs could maintain the action.

As to this we ask leave to call to the attention of the Court section 5 of the Indian Law. It is in these words:

"§ 5—ACTIONS IN STATE COURTS.—Any demand or "right of action, jurisdiction of which is not conferred "upon a peace maker's court, may be prosecuted and en- "forced in any court of the state, the same as if all the "parties thereto were citizens."

Peace maker's courts are confined to the Senecas (R. 94), and the trial court so held—holding that the individual Indians could bring it, but that the nation could not.

We had meant, in the then existing state of adjudged cases—Chancellor Walworth's decision in *Strong* v. *Waterman* (11 Paige, 607), having been—so far as his opinion shows—based entirely upon the reversed decision of the Supreme Court in *Jackson* v. *Goodell*, 20 J. R. 188, and apparently in ignorance of its reversal by the Court of Errors (20J. R. 693)—to go on with whichever plaintiff the court finally held entitled to sue and pay the bill of costs for the others.

But after the case had been argued in the Appellate Division, but before it was decided, the Court of Appeals decided the case of *Johnson* v. *Long Island Railroad Company*, 162 N. Y. 462 (opinion attached to this brief—Appendix, p. 1); and followed that decision in this case (R. 189).

An Indian must be either a citizen, an alien, or *not* an human being.

Nobody will support the last proposition. He is not a citizen. He must be an alien.

By the common law, aliens have personal capacity to sue. *Taylor* v. *Carpenter* (Court of Errors, affirming S. C., 11 Paige, 292, 2 Sand. Ch. 603, 611); *Bradstreet* v. *Supervisors of Oneida*, 13 W. R. 546. So that, unless there be some statute to the contrary, and so far as I know

there is none, an Indian has the "*personal*" capacity to come into court and sue.

Mr. Gardner's argument in the *Johnson* case was that the title to all real property was in the state, and that the right to occupation was not in any one individual Indian or any number of individual Indians, but in the tribe or nation in its *collective* capacity, and that, therefore, there was no cause of action in the plaintiffs. And so held the Court (Appendix to Brief, p. 6).

But this has no application to *personal* property.

Chancellor *Walworth* distinctly held in *Strong* v. *Waterman*, 11 Paige, 607, that Indians have the *personal* capacity to sue, and no case is cited to the contrary, nor was any cited in the *Johnson* case.

In the *Dred Scott case*, 19 How. 393, the Court, speaking by Mr. Chief Justice *Taney*, said (p. 420): "Con-"gress might, as we before said, have authorized the "naturalization of Indians *because they were aliens and "foreigners.*"

And in the case of *The Kansas Indians*, 5 Wall. 737, the Court held that because certain of the Wea Indians had sued in the courts of Kansas "*sometimes voluntarily* and in certain specified cases "by direction of the Secretary of the Interior" (p. 758), they had not submitted themselves to all the laws of the state, showing, of course, that they had *personal* capacity to sue.

The *Johnson* case is the first case in the world, so far as I can find, and, with the exception of this, the *only* case, in which it has been held that an Indian had *not* personal capacity to sue.

IV.

Given somebody who can sue, success in the action is certain.

I.—The trial court finds that the wampum records once belonged to the League and that the Onondaga Nation was their official custodian (R. 30).

"III.—That during the earliest period of the existence "of said Confederacy, the Indians of which said League "was composed made use of strings of wampum beads or "shells braided or pleated together in broad bands and "commonly known as wampum belts, as a means of com- "memorating and preserving the memory of important "events such as the making of treaties, the coming of the "white men, &c., and that while the League of the Iro- "quois was in active existence the tribes or members "thereof composing it employed this method of preserv- "ing the history of the events which they conceived to "be of importance.

"IV.—That while such custom was in vogue the care "and custody of such wampum belts as were so used was "entrusted to the Onondaga Nation, which appointed one "of its members as an official sometimes designated as "the 'wampum-keeper,' whose duty it was to preserve "the same and upon ceremonial occasions expound them "and emphasize their meanings and significance.

"V.—THAT THE WAMPUM BELTS MENTIONED AND DE- "SCRIBED IN THE COMPLAINT IN THIS ACTION CONSTI- "TUTED A PORTION OF THE WAMPUM BELTS AT ONE "TIME MADE AND POSSESSED BY THE LEAGUE AND USED "FOR THE FOREGOING PURPOSES."

Italics and capitals above, mine.

This finding, of course, ends the case, *unless* there is evidence of a transfer of the ownership of the wampums BY THE LEAGUE, to somebody else.

"*We submit that there is not any such evidence.*

All that there is in the case is General Carrington—in the following words (R. 73).

"Q. Did you visit the Onondaga Nation or Tribe? A. "At the Onondagas I found no relics of value until I "called with President La Forte upon Thomas Webster "to verify references made to him as the possessor of "wampums. It was twice or three times of calling before "the old man would show me the wampums——

"Q. When you say 'the old man,' you refer to Thomas "Webster? A. Yes, sir; I was at the time occupying "the house of Chief La Forte with my secretary. I told "him of my inquiries made elsewhere and he said that he "would secure me access to Webster's collection; that "some of them he had a good many years, and he claimed "that upon examining them he could read the ancient "history of the Six Nations. He said, 'Perhaps he will "spare you one or two. No one has any interest in them "now except himself, and he keeps them as relics of old "times.' He went to Webster and brought an old valise, "very dilapidated, and tied with a rope, which had been "under his bed, and we examined the wampums together. "A large number of beads were loose, and he gave what, "as far as he could, was his idea of the original meaning "of the wampums. I impressed upon him as well as I "could the importance of their being safely preserved "somewhere and that if he chose to have me take charge "of them, or of any of them, I would guarantee that, "either at Washington or elsewhere, in some safe place, "they would be carefully and permanently preserved. "After some reluctance he consented to come into "Syracuse and bring the valise and give me permission to "have photographs taken."

Q. This is Webster? A. Webster.

"(Witness continuing) I did this so that in case he "declined to sell any to the Government I would at least

"preserve the appearance of them. He entrusted me with "the valise, returned to the Reservation; I had them "photographed and returned them to him.

"(Witness continuing) (R. 74) Shortly after Chief "La Forte told me that Webster would dispose of a por- "tion of them; he was afraid that they would be lost or "stolen and he would bring them over and talk with "me about them. No funds had been placed at my dis- "posal by the Government——"

(R. 79)—"Q. In the affidavit which you verified on "the application for the appointment of a Receiver, "which I have here in my hands, you say that nobody "among the tribes, or any of them, so far as you were "able to learn, disputed Webster's individual ownership "of the wampums, is that a fact? A. I never heard it "disputed.

"Q. And you say—you assert—that no one beyond "Webster had any wampums, or claimed any right to "any? A. That is true, no one other than Webster claimed right to the wampums held by him."

If all of this were true it would not make any difference. To attempt to change the ownership of property by testimony that you "*never heard*" the individual ownership of another, who, so far as appears does not even claim it, "disputed" (R. 79) is a new idea.

It does not even appear that it was ever the subject of conversation except with one Indian. Why should they dispute it, if they were not asked.

And that "no one other than Webster claimed right "to the wampums held by him" (R. 79) is entirely consistent with his being wampum-keeper—besides, it does not appear that it was ever the subject of conversation, except with one Indian.

But, we turn from General Carrington the interested witness in 1898 to General Carrington the sworn public

officer in 1890 evidently proud of his position—and of the responsibility imposed upon him and proud to do his duty.

He says of himself (R. 90): "Considering the fact "that no correct census embracing their actual con- "dition *had ever been made up to 1890, great care was* "*taken in laying out the details of the work for a census* "*and* IN SELECTING THE AGENT TO EXECUTE IT."

There is this in his testimony (R. 77):

"Q. During that time, or at any other time, did Daniel "LaForte say to you that Thomas Webster held any "official position as wampum keeper, or otherwise? A. "No; *Mr. Webster called himself wampum-keeper*, be- "cause he was the only man that had the wampums and "kept them, and so cherishing the tradition as wampum- "keeper, *and I treated him in my report as wampum-* "*keeper*, BUT I DID NOT KNOW HIM OFFICIALLY AS SUCH. "Daniel LaForte treated Webster as tradition treats a "person who collects postage stamps and such things, "and as such is the possessor of national or family associa- "tion."

Italics and capitals mine.

Because, therefore, General Carrington "did not know him" (Webster), "*officially*"—whatever that may mean —as wampum-keeper, *therefore* he was not wampum-keeper.

The above is all the evidence which can possibly be construed to be in support of the finding.

And this is his report:

1.—There are the portraits of the "Officers of the League of the Iroquois in the United States" (facing page 103)—the second of the three is—"Thomas Webster "(Ha-yah-du-gih-wah), 'Bitter Body' KEEPER OF THE "WAMPUM. Snipe Tribe Onondaga."

Capitals mine.

2. (R. 104).

"ANCIENT AND MODERN GOVERNMENT, PROVISIONS AND INCIDENTS:

"The Iroquois league had its democratic and republican "elements, but the separate national governments were "essentially oligarchic. *The only semblance of written "law was the wampum. It was the duty of the 'keeper "of the wampums' to store all necessary facts in his "memory and associate them with the successive lines "and arrangements of the beads so that they could read- "ily be called to mind. At general councils the wam- "pums were produced, solemnly expounded, and made "reminders of history and duty.*

"'*Reading the Wampums became, therefore, a means "by which to perpetuate treaties, and the exchange of "wampums was an impressive occasion. Both the "Canadian and New York divisions of the Six Nations "retain as national heirlooms these evidences of the "chief facts in their national life.*

"*The Onondagas retain the custody of the wampums of "the Five Nations, and* 'THE KEEPER OF THE WAMPUMS,' "*Thomas Webster, of the Snipe tribe, a consistent, "thorough pagan, is their interpreter.*"

Italics mine.

(R. 105) "There are eleven of these historic wampums, "each fraught with traditional story of persons and events.

"*Daniel LaForte, who has been chairman or presi- "dent of the league, and also of the Onondagas, and "elsewhere referred to, still insists that the wampums, "as expounded by Thomas Webster, 'are government "enough for the Nation, and lay down all the rules of "duty that are needed.*

"The fact that the people can have no key to their own "laws, and that the *dictum* of the wampum reader is

"binding, just as his memory or interpretation of the "emblem shall dictate, seems to weigh little with the "pagan party."

"3. The old or pagan element among the Onondagas, "supported by Chief Daniel LaForte, *Thomas Webster*, "KEEPER OF THE WAMPUM, and others, maintained that "their rights to lands in Kansas and similar rights rested "upon treaties made between the Six Nations (exactly "six) and the United States, *and at a general council held "in 1888*, the Saint Regis Indians were formally recog- "nized as the successors of the Mohawks, thus restoring "the original five, while, with the Tuscaroras, maintain- "ing six. The theory was that an apparent lapse from "the six in number would in some way work to their "prejudice" (R. 110).

Italics and capitals mine.

4. And at page 111 he speaks of "*Chief* Theodore" (misprint, *Thomas*) "*Webster*, KEEPER OF THE WAMPUM," as bearing his years with dignity.

Italics and capitals mine.

5. As for Daniel LaForte treating "Webster as tra- "dition treats a person who collects postage stamps and "such things and as such is the possessor of national or "family association" (R. 77)

Contrast the Census Report (R. 105): "Daniel Laforte, "who has been chairman or president of the league, and "also of the Onondagas, and elsewhere referred to, still "insists that the wampums, *as expounded by* THOMAS "WEBSTER, *are government enough for the Nation, and "lay down* ALL *the rules of duty that are needed.*

"The fact that the people can have no key to their "own laws, and that the *dictum* of the wampum reader "is binding just as his memory or interpretation of the

" emblem shall dictate, seems to weigh little with the " pagan party."

Italics and capitals mine.

And the defendant has put in the statement of Daniel Laforte, made August 30, 1897, and procured *ex parte* by the defendant himself through Sanborn, in which Daniel LaForte calls Thomas Webster "*the* Wampum Keeper" (R. 125).

BAPTISTE THOMAS, the treasurer of the nation, gave the list of wampum keepers from the end of Mr. Clark's list (R. 144).

Nobody denies any of this.

III.—The Appellate Division said (R. 178):

" While we should not be prepared to give our assent " to all these findings, upon the evidence, as original " propositions, yet we need not go into the details of " the conclusions arrived at, inasmuch as the ownership " of the belts by Webster is found upon adequate evi- " dence, and that defeats all claim of title thereto by " the University of the State of New York under the " pretended transfer to it in 1898. *There is proof of* " *Webster's ownership of the belts, in the fact of his pos-* " *session thereof, independent of any proof of his having* " *been a wampum keeper, for years prior to his transfer* " *thereof in 1891.*"

Italics mine.

That is—in an action of ejectment—the plaintiff having proved his title, and the possession *necessarily* being in the defendant, the defendant has a right to go to the jury upon the fact—*his possession being evidence of ownership*—and a verdict in his favor will stand.

"When the custody and possession of property is "shown to be equally consistent with an outstanding "title in a third person as with a title in one having "possession, no presumption of ownership arises simply "from such possession."

The Court of Appeals of New York, speaking by Judge Allen, in *Rawley* v. *Brown*, 71 N. Y., 85, 89.

Now, Webster was either wampum keeper, or he was not. *If he was*, then he was a simple custodian, with a duty and a trust, to take care of the property for all of the Ho-de-no-sau-nee. For instance: one of these wampums is the Indian record of the *first* treaty made between the Six Nations and the United States—made by General Washington himself. The white man's counterpart of that treaty exists at this day in English words, written on parchment, in the possession of one John Hay, in Washington City. Now, suppose John Hay, Secretary of State of the United States, were to sell me that white man's counterpart for eighty-five dollars, and the United States were to sue me for it, would John Hay's possession be any evidence to support a judgment in my favor?

If Webster was *not* wampum keeper, then he was simply in possession of the property of others, and his possession is presumed to be the possession of the real owner, and not any evidence of title in him.

Lowery v. *Erskine*, 113 N. Y., 52, 58, 61.

There is not the slightest evidence of any claim of ownership by Webster except the fact of his sale of the wampums.

V.

As to the want of a demand.

This is one of the grounds upon which Mr. Justice Hiscock decided the case.

I.—*The filing of the bill in equity was equivalent to a demand.*

The rule requiring a demand applies only to the common law actions of replevin in the *detinet* and trover, in other words to a conversion.

This is a bill in equity (R. 159).

Where such a bill is filed, if the defendant, by his answer, claims title in himself, the filing of the bill, is, of itself, a sufficient demand.

Ayer v. *Ayer*, 16 Pick., 327, 335:

"No demand on the husband was necessary; for it appears by his answer, that he has denied her right, "which dispenses with a demand; if otherwise, it would "be necessary."

Heard v. *Lodge*, 20 Pick., 53, 61:

"The legitimate object of a demand is to enable the "party to perform his contract or discharge his liability, "agreeably to the nature of it, without a suit at law, and "whenever one party wholly denies the right of the other, "a demand must be useless. The rule in chancery seems "to be, that if the defendant in his answer denies the "right of the plaintiff, he cannot also insist in his defense "that there was no legal demand, as was held in *Ayer* v. "*Ayer*, 16 Pick., 327."

The defendant, in his answer, has denied the right of the plaintiffs (R. 20, 24).

II.—*Whenever one party wholly denies the right of the other demand must be useless.*

Heard *v.* Lodge (above), 20 Pick., 53, 61;
Fall River *v.* Riley, 138 Mass., 336, 340;
9 Amer. & Eng. Enc. of Law, 2d ed., 209;
Moore *v.* Craig, 4 N. Y., Supp., 340.

In this case the defendant has at least twice unqualifiedly asserted his own title (R. 4, 5, 21, 22).

III.—*In order to entitle himself to a demand the defendant must affirmatively, and as matter of defense, show that he purchased for value and without notice. He has not done so.*

Barrett *v.* Warren, 3 Hill, 348, 351.

"But although the defendant said he had bought the "mare, he gave no evidence of that fact, nor did he show "how he came to the possession of the property. He "may, for aught that appears, be a trespasser on a tres- "passer. I think it was enough for the plaintiff to show "the original wrongful taking. *That threw the burden* "*upon the defendant of showing that he came into pos-* "*session of the property by purchase or bailment, and* "*without fault on his part.*"

In *Pierce* v. *Vandyke*, 6 Hill, 613, this rule is restated and the court adds (p. 614): "If he (defendant) knew, *or* "*had any reason to believe that he was dealing with one* "*who acquired the property unlawfully*, he may then be "treated as a wrong-doer, without any demand by the "true owner."

In *Ely* v. *Ehle*, 3 N. Y., 506, the court held the same thing, and also held that the matter of justification or excuse *must be pleaded* (pp. 510–111); the court saying (p. 509): "Having proved the original tortious taking the

" cases referred to assert the principle *that it then lies on* " *the purchaser or bailee*, in order to protect himself from " liability as a trespasser, *to show that he came to the* " *possession of the property for a lawful purpose and* " *in perfect good faith*, by delivery from the wrong-doer. " That being proved, and that he had been guilty of no " fault, he would be protected against a liability, as a " tortious taker of the property, although, even in that " case, he would be answerable to the owner for the prop- " erty, in trover or replevin in the *detinet* after demand " and refusal to deliver."

And at page 511 they hold this must be pleaded.

In *Tallman* v. *Turck*, 26 Barb., 167, the same rule is stated and the court concludes (p. 172): "This rule requires " demand of the defendant to be proved, only AFTER *he* " *has established the fact that he purchased in good* " *faith* AND *for a valuable consideration.* The latter " was not proved and so the demand was unnecessary."

All italics and capitals in this division mine.

The defendant has alleged and proved the payment of the valuable consideration all right, *but he has neither alleged* (*R. 20*) *nor proved the want of notice.*

1.—The wampums came to Albany the *fifth* of March (R. 132). Sanborn, who received them, knew perfectly well what they were, for, on the *seventh* of March he sent back the receipt which described them (R. 132, 133).

They remained in Albany until the *twenty-fourth* of March—more than two weeks—when the defendant made his cheque for them (R. 117).

If the defendant then knew what Sanborn is shown by his letter and receipt to have known, *he knew that no title could have been given without a Six Nation Council.* Sanborn was all this time under his employ and subject to his orders.

By all rules of law Sanborn's knowledge was his knowledge, the law presuming that Sanborn told him.

It was therefore incumbent upon him to show that he did *not* know.

He has not done so.

2.—Dr. Crane supposed that he was selling the wampums to the State of New York (ante p. 70–71). Perhaps he would not have sold them to the defendant.

The defendant's justification is that there was no appropriation. The two appropriations made by Chapter 236, Laws 1892, and Chapter 188, Laws 1893, are general in their character. They contain no limitation whatever upon the power of the managers; and under them the defendant had the spending of *six hundred thousand dollars, and he spent it all.*

To face p. 72 *above*, is the photograph of a picture which he found it in his conscience to buy.

But after the passage of Chapter 497, Laws 1893, there could have been no possible doubt as to the power.

Under that act the managers turned over to the State Museum property worth about one hundred thousand dollars—"World's Columbian Exposition Report," signed by defendant (Senate document 86 of 1894, p. 151), and see picture which he bought—to face page 72, ante.

Under the rule above referred to, it is for the defendant to show that these things are not so.

IV.—In the common law actions of trover and replevin, both of which were, of course, actions sounding in tort, in which the defendant's body could have been taken in execution, it was necessary to a recovery to show a *conversion* of the chattels.

Demand and refusal were *evidence* of a conversion, but *they were not anything else nor more.* If the conversion were established by other evidence, there was no need of

proving a demand. *Kelsey* v. *Griswold*, 6 Barb., 436, 440; *Hill* v. *Covell*, 1 N. Y., 522, 524.

There is no case which holds that a demand is necessary as a prerequisite *to any other sort of action*, and this action is not either of those sorts.

But let us suppose that we have to prove a conversion.

Boyce v. *Brockway*, 31 N. Y., 490, was this: Defendant received at his warehouse in Catskill a sleigh load of firkins of butter, some of which were his and some were plaintiffs'. He shortly afterwards shipped the whole, by a steamboat, to New York. There was no evidence that he sold them or did anything else with them, on the contrary there was evidence that he sold his own, and that he did *not* sell the plaintiffs'.

The court said, speaking by Mr. Justice Davis (p. 492):

"The defendant gave evidence tending to show that he "received the butter in question in good faith, supposing "it to be his own, and *without any knowledge that it be-* "*longed to plaintiffs*. He requested the court to charge "that '*in that case* if he took the same care of it as "'his own, and it was lost without his fault, this action "'was not sustained.' The charge as requested would "have been proper if the defendant had, under such cir- "cumstances, simply received the butter and stored it in "his warehouse. Such an act would not have been the "exercise of such dominion over it, as would amount to a "conversion without proof of a demand and refusal. "There would be no sufficient assumption of ownership "by a mistaken acceptance of the property so delivered, "to render him chargeable for any relation beyond that "of bailee; but quite a different question arose when he "shipped the butter to New York *as his own*. That was "an assumption of dominion, which, whether founded "on mistake or not, was in hostility to the ownership of

" the plaintiffs. The law on this subject is well settled. " The proof, says Brown, *J.*, in *Cobb* v. *Dows* (9 Barb., " 242), 'need not show a tortious undertaking, or that " ' the defendant acted in bad faith. If it should appear " ' that they obtained the goods fairly from a person whom " ' they had reason to think was the true owner, or if they " ' acted under a mistake as to the plaintiff's title, or, " ' under an honest but mistaken belief that the property " ' was their own, they would still be liable to plaintiffs if " ' their acts in regard to it amounted to a conversion. If " ' they have taken it into their own hands, or disposed " ' of it to others, or exercised any dominion over it what- " ' ever, they are guilty of a conversion, and their liability " ' to plaintiffs is established.' This exposition of the law " is fully sustained by the authorities. (*Perkins* v. " *Smith*, 1 Wils., 328; *Everett* v. *Coffin*, 6 Wend., 603; " *Williams* v. *Merle*, 11 *id.*, 80; *Saltus* v. *Everett*, 20 " *id.*, 267; *Hoffman* v. *Cason*, 22 *id.*, 285; *Cowell* v. " *Hill*, 4 Denio, 323; *Allen* v. *Crary*, 10 Wend., 349; " *Murray* v. *Burliug*, 10 Johns, 175; *Schroeple* v. " *Corning*, 5 Denio, 240 *Connah* v. *Hall*, 23 Wend., " 462)."

" A wrongful intent is not an essential element of the " conversion. It is enough in this action that the " rightful owner has been deprived of his property by " some unauthorized act of another assuming dominion " or control over it."

Boyce v. *Brockway* (31 N. Y., 490) has been often approved.

Pease v. *Smith*, 61 N. Y., 471, 481;
Robinson v. *Chemical Bank*, 86 N. Y., 404, 407;
Simon v. *Simon*, 38 App. Div., 85, 87.
Lovell v. Shea, 60 Sup. Ct., 412, 414.

In *Pease* v. *Smith*, 61 N. Y., 477, the Commission, speaking by Dwight, Commissioner, said (p. 481):

"The principle is well stated by Alderson, B., in "*Fouldes* v. *Willoughby* (8 M. & W., 540): "'Any "'asportation of a chattel for the use of the defendant "'or a third person amounts to a conversion, for this "'simple reason, that it is an act inconsistent with the "'general right of dominion which the owner of a "'chattel has in it, who is entitled to the use of it at all "'times and in all places.'" And then he goes on to quote with approval the latter part of the language last quoted from *Boyce* v. *Brockway* (31 N. Y., 490).

In this case the defendant sent the wampums to Chicago *as his own*. He not only did that, but he there publicly exhibited them, conspicuously, at the World's Fair, and as his own property (R. 5, 4); and he signed a report to the legislature in which he states that the Hi-a-wat-ha belt is "now in the possession of Hon. John Boyd "Thacher, of Albany."

So he must have brought them back to Albany.

And he has since been distinctly and publicly asserting his ownership (R. 4, 5, 20) ever since.

So he must have brought the wampums back to Albany *as his own*.

V.—I have tried to show above that if Mr. Thacher is to have a right to a demand because he bought in good faith—that is *without notice*—he must plead and prove it.

Tallman v. *Turck*, 26 Barb., 167, 172.
Ely v. *Ehle*, 3 N. Y., 506, 510–511.
Pierce v. *Van Dyck*, 6 Hill, 613, 614.
Barrett v. *Warren*, 3 Hill, 348, 351 (quoted above p. 124).

Mr. Delahanty said in his second brief in the court below (p. 12) speaking of Mr. Sanborn's letter to Dr.

Crane, which contained the receipt (R. 132–134)—"The "date 'March 7th' is evidently a clerical error for "'April 7th,' 1893." Let us suppose this to be so, and see where it puts Mr. Sanborn. The money had gone to Dr. Crane on the 24th March, and *Mr. Sanborn knew it had gone, because he sent it* (R. 117). If the date of this letter be April instead of March, he is here deliberately telling Dr. Crane that he has sold his wampums to *the State of New York, and is inducing him to sign a receipt for the money from the State of New York, when he knew the contrary.* But it is plain that the date of the letter is correct, because it says that the money had not been received (R. 132, 133)—whereas, if the date were April, the money would have been gone *two weeks before the letter.*

They bought for the Columbian Exposition the portrait of the then Lieutenant-Governor—and the other long picture (to face page 72 *supra*), nobody knows what it is about, which hang in Senate's hall. On the day before Mr. Thacher made his cheque Mr. McNaughton paid out $419.36 for bills paid in "General, Women's, Forestry "and Indian (Ethnology) exhibits, and on the *same* day "Fine Arts $1250." World's Fair Report (Senate Doc. 86 of 1894), p. 595, and there is a statue of Hendrick Hudson and other *statues* in the Capitol which they bought, and turned into the State Museum as part of the "property worth about one hundred thousand dollars," *supra*, p. 126. If they could buy these things, *why not the wampum records?*

In saying this I submit that I am not travelling out of the record—I have a right to test the meaning of the appropriation act by what they did under it.

But the great evidence of want of good faith is this. Both Mr. Thacher and Mr. Sanborn knew perfectly well what they were buying. There is abundant proof of this

over their own signature—besides their extreme eagerness to get them.

If they had any information or any reason to believe that a Six Nation council, or even a council of the Onondagas had ever authorized their sale, *why have they not proved it?—and if he was honest in his belief that he had no right to use the State's money, why did he not take it when the State offered to reimburse him?* (R. 22–24).

The want of such proof is fatal to Mr. Thacher's right to a demand.

Assuming that a prior demand is necessary to support the action in the recovery of the possession, it is not necessary for the other relief

This Mr. Justice Hiscock himself admits (R. 160).

VI.

There was a sufficient demand.

It is printed at page 126—and was authorized by the written direction of seven chiefs, one less than a quorum, it is true, but one of them was *the president* (R. 152, 125).

As the wampum-keeper had died two months before (R. 61), the only executive officer who could act was the

president, and unless he could make a demand the statute might run, which would be absurd.

The president of any sort of corporation has such power by virtue of his office.

Morse on Banks and Banking, § 143b.
17 Amer. & Eng. Ency. of Law, 131.

The defendant cannot, under the circumstances, *now* raise the question of Mrs. Converse's *authority*.

Moore *v.* Fargo, 112 Mass., 254, 258.
Phelps *v.* Gilchrist, 28 N. H., 266.

VII.

The Statute of Limitations.

Of course, if the Indian plaintiffs cannot sue, there is no question about the statute, because there never was anybody, until February, 1898, when the university was elected wampum-keeper, who had capacity to sue.

But otherwise:

In the first place it must be assumed that we have got a cause of action.

I.—In the next place let us assume that the cause of action accrued when Webster sold, or attempted to sell, the wampums to General Carrington on the tenth of February, 1891.

Assuming also that Mr. Thacher can tack to his time the time of the possession of the wampums by General Carrington and Doctor Crane, and assuming that the action was begun when the new plaintiffs were brought in on the twentieth of December, 1898, the case stands this way:

Section 401 of the Code of Civil Procedure of New York contains the following:

"Section 401. If, when the cause of action accrues "against a person, he is without the state, the action may "be commenced within the time limited therefor, after "his return into the state. If, after a cause of action "has accrued against a person, he departs from the state "and remains continuously absent therefrom for the "space of one year or more, or if, without the knowl- "edge of the person entitled to maintain the action, "he resides within the state under a false name, the "time of his absence or of such residence within the "state under such false name is not a part of the time "limited for the commencement of the action."

The cause of action accrued against General Carrington tenth of February, 1891 (R. 76).

The action was begun twentieth of December, 1898 (R. 27).

Seven years, ten months, ten days. 7 y. 10 m. 10 d.

General Carrington left the State tenth of April 1891 and was out of it, except that he spent a week in Saratoga in July, 1892, until he delivered the wampums to Docter Crane. (Letters of 2 January 1899 and 16 March 1899 (R. 84–87). He thus was out of the State continuously for more than a year. He went from Saratoga to

Hyde Park and delivered the wampums to Doctor Crane. Doctor Crane resided in Boston and Florida until he died, and the cause of action against him arose when he was out of the State and he never came into the state afterwards. (Letters of 2 January 1899 and 16th of March 1899 (R. 85–87).

Mr. Thacher's cheque is dated the 24th of March, 1893 (R. 117), and it went to Dr. Crane in Florida (R. 117). A cause of action could not therefore possibly have accrued against Mr. Thacher until the twenty-fourth of March, 1893.

Deduct the time between the tenth of April 1891 when General Carrington left the state and the twenty-fourth of March, 1893 when a cause of action arose against Mr. Thacher. 1 y. 11 m. 14 d.

5 y. 10 m. 24 d.

Add seven days when General Carrington was in Saratoga..... 7 d.

31 d.

and the result is..... 5 y. 11 m. 1 d.

In Bennett *v.* Cook, 43 N. Y., 539, there had been a verdict for the plaintiff and there was evidence, which went to the jury, that the defendant had been in New York not more than ten of the twenty-four hours of each day—the other hours in New Jersey. The court held that fourteen hours of each of those days must be deducted from the time of the statute.

The statute of limitations is a defence, which must not

only be pleaded, but the facts to establish that defence must be *proved*.

Cole *v.* Jessup, 10 N. Y., 96, 104.

So that the statute has not run even upon that theory.

II.—*But that is not the correct theory.* The action was in fact begun 9th of October, 1897 (see defendant's appearance, R. 154). And since the action was brought as a representative one, the statute runs against the inividuals brought in on the twentieth of December, 1898, *as if they had been in at the beginning of the action.* (*Brinckerhoff* vs. *Bostwick*, 99 N. Y., 185, 194.)

Mr. Delehanty stated, in his brief in the court below, in regard to this matter, that at the time those "who now "assume to be the plaintiffs were brought into the case" ("22 December, 1898,") "Te-hes-ha, the other plaintiff, "*was dead*" (Brief, p. 43).

In regard to this as to much of the other statements of fact in Mr. Delehanty's briefs below, there should be said what Parkman said of Henry Schoolcraft in regard to these very Ho-de no-sau-nee and these very wampums.

"; but here, as in all "Mr. Schoolcraft's productions, *the reader must scru-* "*pulously reserve his right of private judgment.*"

"The Jesuits in North America," Champlain ed., Boston, 1897, 1, 45, note.

Italics mine.

Te-hes-ha was *not* dead when the other plaintiffs were brought in (R. 59, 61), whether he has died since does not appear, nor is it of the slightest consequence.

Until his death be suggested to the court the case will go on just the same whether he be alive or dead. When his death has been suggested to the court his personal representatives will come in and the case will also go on just the same.

III.—*No cause of action accrued in favor of anybody, until the 10th February, 1891.*

If Webster was wampum-keeper he had the right to the possession of the wampums as against all the world—at any rate until the Onondaga Nation turned him out of that office.

If he was not wampum-keeper—then, until there was an assertion, ON HIS PART, *of ownership in* himself, of the wampums, *to the knowledge of the plaintiffs*, the statute did not begin to run.

If he was not wampum-keeper he must have been either bailee, agent, a tenant in common with the other Indians of the Ho-de-no-sau-nee—or a total stranger.

If he was bailee or agent his possession was the possession of his bailor or principal until he openly repudiated his trust.

If his possession was as tenant in common with the others of the Ho-de-no-sau-nee, then no action would lie against him; not even by all the rest put together.

Russell v. *Allen*, 13 N. Y., 173.
Le Baron v. *Babcock*, 122 N. Y., 153, 157.

If he was a total stranger, then the statute would not begin to run until he asserted his ownership, his possession until then being deemed in law to be the possession of the real owner (*Duryea* v. *Andrews*, 34 State Rep., 774); nor then, though he openly asserted his ownership, unless it was proved that *notice* of that assertion had come to the plaintiffs.

In *Mayor, &c., of N. Y.* vs. *Lent and Others*, 51 Barb., 19, the report says (p. 19): "The action was brought to "recover possession of an autograph letter, written by "General Washington, and addressed to the plaintiffs, in "1785, and which, in May, 1864, was sold at auction by "the defendants, composing the firm of Bangs, Merwin & "Co., to the defendant Lent.

"It appeared in evidence, that John Allan, in the year "1864, was in the possession of the letter, and that it con- "tinued in his possession until November 1, 1863, when "he died, and the possession thereof passed to Margaret "Stewart, his executrix, by whom it was placed in the "hands of the above-named auctioneers, to be sold at pub- "lic auction, and it was sold by them to Lent, for the sum "of $2,050."

It was proved that the letter was written in answer to a vote by the common council of the freedom of the city, and that the letter had been read at a meeting of the common council on the second of May, 1785; and that John Allan "was a collector of rare manuscripts and literary "curiosities; that he had a large collection of such arti- "cles; that at the time of his death, in 1863, he had been "in possession of the letter for thirty years and upwards, "exhibiting it to various persons from time to time, as his "own" (p. 29). The Court said (p. 27): "No notice is "shown to have been at any time given to the corporation "of the possession by Allan. Had such notice been "shown, the statute of limitations by appropriate lapse "of time might have had application." (The statute was properly pleaded, Gen. Term Cases, Bar Asso., vol. 77 of 1868, case 26, fol. 27.)

VIII.

Equity has jurisdiction.

Duke of Somerset vs. *Cookson*, 3 P. Wms., 390. Bill in equity to compel the delivery in specie and undefaced of an old altar-piece of silver, "remarkable for a Greek "inscription and dedicated to Hercules."

The defendant demurred, for that there was remedy at law.

Complainant urged that it "was matter of curiosity "and antiquity, and though at law only the intrinsic "value is to be recovered, yet it would be very hard that "one who comes by such a piece of antiquity by wrong, "or it may be as a trespasser, should have it in his power "to keep the thing, paying only the intrinsic value of it; "which is like trespassers forcing the right owner to "part with a curiosity, or matter of antiquity, or orna-"ment, *nolens volens*. Besides, the bill is to prevent the "defendant from defacing the altar-piece, which is one "way of depreciating it." And the law being defective in "this particular, such defect is properly supplied in "equity." (Lord Chancellor Talbot.)

Pusey v. *Pusey*. Bill was that a *horn*, which time out of mind had gone along with the plaintiff's estate, and was delivered to his ancestor's in ancient time to hold their land by, might be delivered to him; upon which horn was this inscription, viz.: *pecote this horn to hold thy land*. (1 Vern. 283, 20 Nov. 1684 Lord Keeper Rosslyn.)

Fells v. *Read*, 3 Ves., 70. A club consisted of persons who had served the office of Overseer of the poor of St. Margaret's Parish. This club had been for a long time "in possession of a silver tobacco-box inclosed in "two large silver cases, all of which were adorned with "several engravings of public transactions and heads of

"distinguished persons. The date of the box did not "appear in the cause; but the ornaments, which had "been added by different overseers during the time the "box and cases remained in their custody, began in the "year 1713. This box and the cases were always kept "by the overseer for the time being; who upon coming "into office received them from the churchwarden with a "particular charge, in which he was enjoined, under a "penalty, to produce them at all meetings of the society, "and to deliver them upon going out of office to the "senior churchwarden, to be by him delivered to the suc-"ceeding overseer."

This box was as usual delivered to the defendant Reed when he became overseer. When his term was out he refused to deliver the box unless the vestry of the Church passed his accounts. Thereupon two members were directed at a meeting to bring an action, which they did, *but afterwards released to Reed.*

Lord Loughborough said: "The value I cannot meas-"ure. The Pusey horn, the Patera of the Duke of Som-"erset, were things of that sort of value, that a jury "might not give two pence beyond their weight."

Lloyd v. *Loaring*, 6 Ves., 773; Bill by three of the Caledonian Lodge of Free Masons for the delivery, "un-"injured and undefaced" (p. 775) of the dresses and "decorations, and the books and papers, tools and im-"plements, and other goods and effects of the said "chapter," including "the original warrant or charter "granted to them by the grand or head charter of Royal "Arch Masons; by which the Caledonian Chapter is con-"stituted or authorized and continued" (pp. 774, 775).

Lady Arundell v. *Phipps and Taunton*, 10 Ves., 139: "family pictures and furniture."

By Lord Eldon: (p. 148) "and this Court having in "many instances interposed to protect the enjoyment of

"a specific chattel, the question is whether the very "object and subject of the contract do not make it neces- "sary to consider whether the Court cannot give the "specific relief of fixing in the trustees the very property, "instead of the amount in damages."

Nutbrown v. *Thornton*, 10 Ves., 159: "Order specifically "to restore to a tenant the stock, &c., on the farm, "seized by the landlord under a distress and bill of sale; "jurisdiction for specific delivery of a chattel, the value "of which is not to be estimated by damages."

Lord Eldon (p. 163) "I had not forgot the case of the "*Pusey Horn* (Pusey *v.* Pusey, 1 Vern., 273), which "turned upon the *pretium affectionis;* independent of "the circumstances as to tenure; which could not be "estimated in damages. As to *Fells* v. *Brown*, the ob- "jection to which no answer was given, was, who were "the *cestuys que trust?* Individuals sued, who did not "pretend to say the box belonged to them. The overseers "were gone. Lord Rosslyn, however, thought he saw a "trustee and a *cestui que trust;* and those got the chattel "who ought to have had it. But this is the case not of "a single chattel, unconnected, but of a great variety of "chattels, which must be held upon a trust together "with the estate. There is, therefore, a *cestui que trust.* "Upon the particular circumstances also, the Court "would be justified in interposing to prevent the destruc- "tion of the property, until the rights were ascertained, "upon the principle of irremediable mischief. It is said "the Plaintiff might have damages. But how are damages "to be ascertained in such a case? The direction to a "jury must be to give, not the value of these chattels "merely, but their value to this man, having this farm, "enabling him to use them for the purpose of cultivation.

Earl of Macclesfield v. *Davis*, 3 Ves. & B. 16; Plate,

jewels, etc., bequeathed as heir looms, kept in a locked iron chest.

Lord Eldon (p. 18), "It is now too late, since the case "of *Fells* v. *Reed*, 3 Ves. 70, following *Pusey* v. *Pusey*, "1 Vern. 273, to discuss, whether this Court will inter- "fere for the specific delivery of a chattel; and, if it will "in such a case, *a fortiori* the restitution of heir-looms "must be decreed; upon which there never was any "doubt."

Lowther *v.* Lord Lowther, 13 Ves. 95; A painting (by Lord Erskine).

Osborn v. *Bank of United States*, 9 Wheat. 738, 845: "We think it a case in which a Court of equity ought to "interpose, and that there are several grounds on which "its jurisdiction may be placed.

"One, which appears to be ample for the purpose, is, "that a Court will always interpose, to prevent the trans- "fer of a specific article, which, if transferred, will be "lost to the owner." (Gives instances of negotiable securities and transfer of stock.) "In these cases the "injured party would have his remedy at law; and the "probability that this remedy would be adequate, is "stronger in the cases put in the books than in this, "where the sum is so greatly beyond the capacity of an "ordinary agent to pay. But it is the province of a Court "of equity, in such cases, to arrest the injury, and pre- "vent the wrong. The remedy is more beneficial and "complete, than the law can give." To restrain the State Treasurer of Ohio from parting with $100,000 in specie which had been taken by a tax collector from the Bank of the United States.

Pattison *v.* Skillman, 34 N. J. Eq. 344: "This c[illegible] "has jurisdiction to enforce the restitution or delivery of "a specific chattel which has a peculiar artificial value,

" and for which, therefore, adequate compensation cannot " be obtained at law; and that, too, whether possession " has been got by the wrong-doer through a trust or not" (p. 347).

Letters, power of attorney, receipt and written testimony of witnesses.

Brigham *v.* Home Life Insurance Co., 131 Mass. 319; Policy of insurance.

Hill *v.* Rockingham Bank, 44 N. H., 567; Certificates of stock.

Individual slaves.

Dudley *v.* Mallory, 4 Geo. 52, 66–67.
Loftin *v.* Espy, 4 Yerg. 84.
Henderson *v.* Vaulz & wife, 10 Yerg. 30, 37–38.
Murphy *v.* Clark, 1 Smedes & M. 221, 233–236.
Butler *v.* Hicks, 11 Smedes & M., 78.

IX.

The Court has jurisdiction.

In *Eustis* v. *Bolles*, 150 U. S. 361, the Court, speaking by Mr. Justice Shiras, said (p. 366):

" It is settled law that to give this court jurisdiction of " a writ of error to a state court, it must appear affirma- " tively, not only that a Federal question was presented " for decision by the state court, but that its decision was

"necessary to the determination of the cause, and that it "was actually decided adversely to the party claiming a "right under the Federal laws or Constitution, or that "the judgment as rendered could not have been given "without deciding it. *Murdock* v. *Memphis*, 20 Wall. "590; *Cook County* v. *Calumet & Chicago Canal Co.*, "138 U. S. 635.

"It is likewise settled law that where the record dis- "closes that if a question has been raised and decided "adversely to a party claiming the benefit of a provision "of the Constitution or laws of the United States, another "question, not Federal, has also been raised and decided "against such party, and the decision of the latter ques- "tion is sufficient, notwithstanding the Federal question "to sustain the judgment, this court will not review the "judgment.

"In *Klinger* v. *Missouri*, 13 Wall. 257, 263, this court, "through Mr. Justice Bradley, said: 'The rules which "'govern the action of this court in cases of this sort are "'well settled. Where it appears by the record that the "'judgment of the state court might have been based "'either upon a law which would raise a question of "'repugnancy to the Constitution, laws, or treaties of the "'United States, or upon some other independent ground, "'and it appears that the court did, in fact, base its "'judgment on such independent ground and not "'on the law raising the Federal question, this court will "' not take jurisdiction of the case, even though it might "' think the position of the state court an unsound one. "' But where it does not appear upon which of the two "' grounds the judgment was based, then, if the indepen- "' dent ground on which it might have been based was a "' good and valid one, sufficient of itself to sustain the "' judgment, this court will not assume jurisdiction of "' the case; but if such independent ground was not a "' good and valid one, it will be presumed that the state

" ' court based its judgment on the law raising the Fed-
" ' eral question, and this court will then take jurisdic-
" ' tion.'

" In *Johnson* vs. *Risk*, 137 U. S. 300, the record " showed that, in the Supreme Court of Tennessee, two " grounds of defence had been urged, one of which in- " volved the construction of the provisions of the Federal " bankrupt act of March 2, 1867, and the other the bar of " the statute of limitations of the State of Tennessee; " and this court held that 'where, in an action pending " ' in a state court, two grounds of defence are inter- " ' posed, each broad enough to defeat a recovery, and " ' only one of them involves a Federal question, and " ' judgment passes for the defendant, the record must " ' show, in order to justify a writ of error from this " ' court, that the judgment was rested upon the disposi- " ' tion of the Federal question; and if this does not " ' affirmatively appear, the writ of error will be dis- " ' missed, unless the defence, which does not involve a " ' Federal question, is so palpably unfounded that it " ' cannot be presumed to have been entertained by the " ' state court.' "

In this case the decision of the Court of Appeals was *solely* on the Federal question, as the record affirmatively shows.

II.—And the jurisdiction of the Court turns wholly upon what *the Court of Appeals* did—what the courts below did does not matter.

Here is the text of the judiciary act:

R. S., 1878, p. 133.

"Sec. 709. A final judgment or decree in any suit *in* " *the* HIGHEST *court of a State*, in which a decision in the

"suit could be, had, where is drawn in question the valid-
"ity of a treaty or statute of, or an authority exercised
"under, the United States, and the decision is against
"their validity, or where is drawn in question the valid-
"ity of a statute of, or an authority exercised under
"any State, on the ground of their being repugnant to
"the Constitution, treaties or laws of the United States,
"and the decision is in favor of their validity; or where
"any title, right, privilege, or immunity is claimed
"under the Constitution, or any treaty or statute of, or
"commission held or authority exercised under, the
"United States, and the decision is against the title,
"right, privilege, or immunity specially set up or claimed
"by either party, under such Constitution, treaty,
"statute, commission, or authority, may be re-examined
"and reversed or affirmed in the Supreme Court upon
"writ of error."

It is the decision of the *highest* court of the State upon which the jurisdiction of the Court turns.

The judgment should be reversed.

AS-QUE-SENT-WAH
(EDWARD WINSLOW PAIGE,)
of Counsel.

APPENDIX.

Opinion Court of Appeals.

COURT OF APPEALS.

EUGENE A. JOHNSON,
Respondent,

v.

THE LONG ISLAND RAILWAY COMPANY,
Appellant.

(Decided April 17, 1900, 162 N. Y., 462.)

Appeal from an order of the Appellate Division, second department, reversing an interlocutory judgment which sustained a demurrer to the complaint.

Alfred A. Gardner and William J. Kelly for appellant.

Leman B. Treadwell and Francis M. Morrison for respondent.

BARTLETT, *J.:* This appeal is taken by permission of the Appellate Division, which certified three questions to this court: (1) Has the plaintiff in this action legal capacity to sue? (2) Is there a defect of the parties plaintiff in this action, in that the members of the alleged Montauk Tribe of Indians are not made parties plaintiff? (3) Does the complaint herein state facts sufficient to constitute a cause of action?

This is an action of ejectment brought by the plaintiff, a citizen of the United States of Indian

blood and lineage, and a member of the Montauk Tribe of Indians by right of birth and affiliation, on behalf of himself and all other persons equally interested with him, who may come in and contribute to the expenses of the action.

The demurrer contains a number of grounds stated in detail why the plaintiff cannot maintain this action.

The single question presented is, whether the plaintiff as a member of this tribe of Indians can maintain ejectment on behalf of the tribe in the form of action already described.

The Special Term sustained the demurrer to the complaint, but the Appellate Division, with a divided court and expressing the opinion that the plaintiff's right is not free from doubt, reversed the interlocutory judgment on the ground that this action is brought in accordance with the views expressed on a prior appeal.

Judge Willard Bartlett dissenting was of the opinion that the complaint in the present action was not framed in accordance with the previous decision.

The prior appeal referred to was the case of Montauk Tribe of Indians, by Wyandank Pharoah, their chief and king, against the present corporation defendant (28 App. Div., 470.)

In that case a demurrer was sustained to the complaint on the ground that the plaintiff had no legal capacity to sue, and the Appellate Division affirmed the interlocutory judgment to that effect.

Cullen, *J.*, who wrote the opinion of the Court, in which all the justices concurred, said: "It is not worth while to enter upon any discussion of the *status* of the Indian tribes within this State, as we think that on the question now before us we are concluded by authority. In Strong *v.* Waterman(11 Page, 607) it was held that, while the Indians

had the undoubted right to the beneficial use and occupancy of their lands, no provision had been made by law for bringing ejectment to recover possession of them; that as a body or tribe, the Indians had no corporate name by which they can institute such a suit."

The learned judge then pointed out that the same doctrine has been laid down in Seneca Nation *v.* Christie (126 N. Y., 122).

That was an action of ejectment brought by the Seneca Nation of Indians to recover certain lands in Erie county, and this court held that the right of the plaintiff to sue in that form was given by, and was dependent upon a statute, which was a special act for the protection and improvement of the Seneca Indians, residing on certain reservations in this state (Chap. 150, Laws 1845).

Judge Andrews, who wrote the opinion of the court, cites at this point the case of Strong *v.* Waterman (*supra*) undoubtedly to show that under the law of the state as it then stood, this action could not be maintained by the Indian tribe, except by the provisions of an enabling act.

In the case of Strong *v.* Waterman (*supra*) the action was brought by Strong and Gordon, chiefs of the Seneca Nation of Indians, against a white man for an injunction restraining him from committing trespasses and waste upon the reservation of the tribe and from interfering with its possession.

The immediate proceeding was a motion to dissolve this injunction. The chancellor, in the course of his opinion, states: "No provision, however, has been made by law for the bringing an ejectment to recover the possession of Indian lands in the Cattaraugus reservation. For the right to the possession is in several thousand individuals in their collective capacity, which individuals, as a body, have no corporate name by which they can insti-

tute an ejectment suit. * * * The Indians cannot, therefore, institute a suit in the name of the tribe; but they must sue in the same manner as other citizens would be required or authorized to sue for the protection of similar rights."

It was, therefore, held that the two persons named as complainants, having been authorized by the council of chiefs, might file a bill for an injunction, to which reference has been made to protect their possession. This was placed expressly upon the ground that if the common law furnished no sufficient protection of the rights of the tribe it is a part of the acknowledged jurisdiction of equity to interpose for its relief.

The learned chancellor evidently recognized a broad distinction between the rights of the tribe in defending its possession of lands and bringing ejectment to secure possession.

We have been cited to no statute nor to any controlling decision authorizing the present action.

The respondent has referred to certain sections of the Indian Law as tending to authorize this action, more particularly section 11 thereof, relating to trespasses on tribal lands, which provides that an action may be brought in the name of the People of the state against any person other than an Indian trespassing upon the tribal lands, by the district attorney of the county, or in the name of the nation, tribe or band, by any three of the chiefs, head men or councillors thereof, etc.

This section obviously has no application to the present situation, and substantially existed as section 8 of chapter 234 of the Laws of 1841, which was in force four years before the decision of Strong *v.* Waterman (*supra*). It is a clear recognition of the necessity for legislation in the premises at that early date.

In the opinion to which reference has already

been made, Judge Cullom said (28 App. Div. 472): "Still the Indians are not without redress. They may apply to the legislature for authority to maintain an action like the present, *or it may be* that, under the authority of Strong *v.* Waterman (*supra*), an action might be instituted by one of their number on his own behalf and on behalf of the other Indians of his tribe."

This is evidently the view expressed on the prior appeal, which led the Appellate Division, in the order we are reviewing, to hold that this plaintiff had legal capacity to sue.

It is to be observed that the learned judge, after referring to the undoubted right of the legislature to authorize the action, merely suggested that, under the authority of Strong *v.* Waterman (*supra*), it might be that an action like the present could be instituted. The expression is evidently intended as a view of the case, concerning which the writer was in doubt. As already intimated, we do not regard Strong *v.* Waterman (*supra*) as authorizing this action.

A decision holding that this action could be maintained either by the tribe, or an individual member thereof, on behalf of himself and all others who should come in and contribute, would be contrary to the policy and practice which have been long established in our treatment of the Indian tribes. They are regarded as the wards of the state, and generally speaking, possessed of only such rights to appear and litigate in courts of justice as are conferred upon them by statute.

It is conceded by the complaint in this action "that the tribe have no legal capacity to sue therefor and have no corporate name by which they can institute such a suit."

The theory of an action by one for the benefit of all is, that where a large number of persons, not

incorporated, are vested with a cause of action, it may be enforced in that manner, but when it is admitted, as in this case, that the tribe has no cause of action, it follows, logically, that no one member of the tribe could sue for the benefit of all, as the cause of action does not exist.

We are of opinion, however, that the Montauk Tribe of Indians are not without legal redress in the premises, as by an application to the legislature an enabling act can be obtained allowing action to be brought on behalf of the tribe, in the name of its chief or head, or in the name of such member or members thereof as may be selected.

It is much better that this course should be pursued than to sustain an action in the present form, which it is conceded by the learned court below is not free from doubt, and which we regard as contrary to long-established public policy.

We answer the three questions certified to us in the negative.

The order appealed from should be reversed and the interlocutory judgment affirmed, but, under the circumstances, without costs to either party in this court.

O'Brien, Haight and Martin, *JJ.*, concur, and Parker, *Ch.J.*, concurs in result; Vann and Landon, *JJ.*, dissent.

Order reversed, &c.

The Indian Law.

Chapter 679 Laws 1892.

"§ 2. POWER TO CONTRACT.—An Indian shall "be liable on his contracts not prohibited by law; "and a native Indian may take, hold and convey "real property the same as a citizen. Upon be- "coming a freeholder to the value of one hundred "dollars he shall be subject to taxation. No per- "son shall maintain an action on a contract against "any Indian of the Tonawanda nation, the Seneca "nation or Onondaga tribe, nor against any of "their Indian friends residing with them on their "reservations in this State, and every person who "prosecutes such an action shall be liable to treble "costs to the party aggrieved." (As amended by chapter 229, Laws 1893.)

"5. ACTIONS IN STATE COURTS.—Any demand "of right of action, jurisdiction of which is not "conferred upon a peacemakers' court, may be "prosecuted and enforced in any court of the "state, the same as if all the parties thereto were "citizens."

Certain Laws relating to the University of the State of New York.

Chap. 51.

AN ACT for granting certain privileges to the college heretofore called Kings College, for altering the name and charter thereof, and erecting an university within this State.

Passed the 1st of May, 1784.

WHEREAS by letters patent under the great seal of the late colony of New York, bearing date the thirty-first day of October, in the twenty-eighth year of the reign of George the second the king of Great Britain, a certain body politic and corporate was created by the name of the Governors of the College of the Province of New York in the City of New York in America, with divers priviledges, capacities and immunities, as in and by the said patent will more fully appear.

AND WHEREAS there are many vacancies in the said corporation, occasioned by the death or absence of a great number of the governors of the said college, whereby the succession is so greatly broke in upon as to require the interposition of the Legislature.

AND WHEREAS the remaining governors of the said college, desirous to render the same extensively useful, have prayed, that the said college may be erected into an university, and that such other alterations may be made in the charter or letters of incorporation above recited, as may render them more conformable to the liberal principles of the Constitution of this State.

BE IT THEREFORE ENACTED BY THE PEOPLE OF

THE STATE OF NEW YORK REPRESENTED IN SENATE AND ASSEMBLY AND IT IS HEREBY ENACTED BY THE AUTHORITY OE THE SAME, That all the rights priviledges and immunities heretofore vested in the corporation, heretofore known by the name of the Governors of the College of the Province of New York, in the city of New York in America, so far as they relate to the capacity of holding, or disposing of property either real or personal, or suing or being sued, of making laws or ordinances for their own government, or that of their servants, pupils and others, under their care and subject to their direction, of appointing, displacing, and paying stewards and other inferior servants, or making, holding and having a common seal, of altering and changing the same at pleasure, be and they hereby are vested in the regents of the university of the State of New York, who are hereby erected into a corporation or body corporate and politic, and enabled to hold possess and enjoy the above mentioned rights, franchises privileges and immunities, together with such others as are contained in this act, by the name and stile of the Regents of the University of the State of New York, of whom the Governor, the Lieutenant Governor, the President of the Senate for the time being, the Speaker of the Assembly, the mayor of the city of New York, and the mayor of the city of Albany, the Attorney General and the Secretary of the State respectively for the time being, be and they hereby are severally constituted perpetual regents, in virtue of their several and respective offices, places and stations, and together with other persons herein after named to the number of twenty four, to wit, Henry Brockholst Livingston and Robert Harpur of the city of New York, Walter Livingston and Christopher Yates of the county of Al-

bany, Anthony Hoffman and Cornelius Humfrey of the county of Dutchess, Lewis Morris and Philip Pell Junior of the county of Westchester, Henry Wisner and John Haring of the County of Orange, Christopher Tappen and James Clinton of the county of Ulster, Christopher P. Yates and James Livingston of the county of Montgomery, Abraham Bancker and John C. Dongan of the county of Richmond, Mathew Clarkson and Rutger VanBrunt of the county of Kings, James Townsend and Thomas Lawrence of the county of Queens, Ezra L'Hommedieu and Caleb Smith of the county of Suffolk, and John Williams and John McCrea of the county of Washington, be and they hereby are appointed regents of the said University, and it shall and may be lawful to and for the clergy of the respective religious denominations of this State, to meet at such time and place, as they shall deem proper after the passing of this act, and being so met shall by a majority of voices of those who shall so meet, chuse and appoint one of their body to be a regent in the said university and in case of death or resignation to chose and appoint another in the same manner and the regent so chosen and appointed shall have the like powers as any other regent appointed or to be appointed by virtue of this act. And to the end that a succession of regents be perpetually kept up.

BE IT FURTHER ENACTED BY THE AUTHORITY AFORESAID, That whenever and so often as one or more of the regents of the said university, not being such in virtue of his or their office, place or station, shall remove his or their place of residence from within this State, shall resign or die, that the place or places of such regent or regents, so removing, resigning or dying shall be filled up by the governor or person administering the government of the State for the time being, by and with the

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advice and consent of the council of appointment, so that such appointments be of persons resident in the counties respectively wherein in the former regents did reside, other than where such vacancy may happen of a regent appointed by the clergy as aforesaid.

AND BE IT FURTHER ENACTED BY THE AUTHORITY AFORESAID, That as soon as may be after the passing of this act, the regents of the said university, shall by plurality of voices, chuse a chancellor a vice chancellor a treasurer and a secretary, from among the said regents, the said chancellor or in his absence the vice chancellor to preside at all elections and other meetings to be held by the said regents, and to have the casting vote upon every division. And for the well ordering and directing of the said corporation.

BE IT FURTHER ENACTED BY THE AUTHORITY AFORESAID, That the regents of the said university, or a majority of them shall be and hereby are vested with full power and authority to ordain and make ordinances and bye laws for the government of the several colleges, which may or shall compose the said university, and the several presidents, professors, tutors, fellows, pupils and servants thereof and for the management of such estate as they may and shall be invested with; that they shall have full power and authority to determine the salaries of the officers and servants of the said college to remove from office any such president professor tutor fellow or servant, as they conceive, after a full hearing to have abused their trust, or to be incompetent thereto, provided, nevertheless, that no fine to be levied by virtue of the said laws or ordinances, shall exceed the value of one bushel of wheat for any one offence, and that no pupil or student shall be suspended for a longer term than twenty days, or be rusticated or

expelled, but upon a fair and full hearing of parties, by the chancellor or vice chancellor of the said university, and at least ten of the regents not being president or professors of the college to which the person accused belongs, or under whose immediate direction the same may be, and the said regents are hereby further impowered and directed as soon as may be, to elect a president and professors for the college heretofore called Kings College, which president shall continue in place during the pleasure of the regents of the university. And that from and after the first election, the said president and all future presidents shall be elected, from out of the professors of the several colleges, that may or shall compose the said university, and that no professor shall be in anywise whatsoever accounted inelligible, for or by reason of any religious tenet or tenets, that he may or shall profess, or be compelled by any bye law or otherwise, to take any religious test-oath whatsoever. And to the end that the intention of the donors and benefactors of the said beforementioned college be not defeated.

BE IT FURTHER ENACTED BY THE AUTHORITY AFORESAID, That all the estate whether real or personal, which the said governors of the corporation of Kings College held by virtue of the said beforementioned charter, be held and possessed by the said regents and applied solely to the use of the said college and that the said regents may and they hereby are empowered to receive and hold for the use of the said college, an estate of the annual value of three thousand five hundred pounds, in manner specified in the said first above recited charter or letters patent of incorporation. And for the further promotion of learning and the extension of literature.

BE IT FURTHER ENACTED BY THE AUTHORITY

AFORESAID, That the said regents may hold, and possess estates, real and personal to the annual amount of forty thousand bushels of wheat, over and above all profits arising from room rent or tuition money, and that whenever any lands tenements or hereditaments, or other estate real or personal, shall be given, granted or conveyed to the regents of the University of the State without expressing any designation thereof, such estate shall be applied in such manner as to the said regents shall seem most advantageous to the said university—provided always, that whenever any gift, grant, bequest, devise or conveyance shall express the particular use to which the same is to be applied, if adequate thereto, it shall be so applied and no otherwise.

AND BE IT FURTHER ENACTED BY THE AUTHORITY AFORESAID, That the said regents be and they hereby are impowered, to found schools and colleges in any such part of this State as may seem expedient to them, and to endow the same, vesting such colleges so endowed with full and ample powers to confer the degrees of bachelor of arts, and directing the manner in which such colleges are to be governed, always reserving to the chancellor and vice-chancellor of the university, and a certain number of the regents, to be appointed by a majority of the said regents, a right to visit and examine into the state of literature in such college, and to report to the regents at large any deficiency in the laws of such college or neglect in the execution thereof, every such school or college being at all times to be deemed a part of the university, and as such, subject to the control and direction of the said regents; and if it should so happen, that any person or persons, or any body politic or corporate, should at his or their expense found any college or school, and endow the same with an estate, real or

personal of the yearly value of one thousand bushels of wheat, that such school or college shall on the application of the founder or founders or their heirs or successors, be considered as composing a part of the said university, and the estate thereunto annexed shall be and hereby is vested in the said regents, of the university, to be applied according to the intention of the donor, and that the said founder and founders, and their heirs, or if a body corporate, their successors shall be and hereby are forever hereafter entitled to send a representative for such college or school, who together with the president (if the estate is applied to the use of a college) shall be and they hereby are at all times hereafter to be considered as regents of the said university, and vested with the like powers and authorities in all things, as in and by this act is given to the other regents of the said university and the said college or school, shall in all things, not particularly restricted by the donor, conform to the general laws and regulations of the said university, provided that nothing in this act contained shall be construed to deprive any person or persons of the right to erect such schools or colleges as to him or them may deem proper, independent of the said university.

AND BE IT FURTHER ENACTED BY THE AUTHORITY AFORESAID, That whenever any religious body or society of men shall deem it proper to institute a professorship in the said university for the promotion of their particular religious tenets, or for any other purpose not inconsistent with religion, morality and the laws of this State, and shall appropriate a fund for that purpose, not being less than two hundred bushels of wheat per annum, that the regents of the said university shall cause the same to be applied as the donors shall direct for the purposes abovementioned, the said professors so to be

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appointed to be subject to the like rules, laws and ordinances, as other professors of the said university, and entitled to the like immunities and privileges.

AND BE IT FURTHER ENACTED BY THE AUTHORITY AFORESAID, That the said regents and their sucessors forever, shall and may have full power and authority by the chancellor or vice chancellor of the said university, or any other person or persons by them authorized or appointed, to give and grant to any of the students of the said university, or to any person or persons thought worthy thereof all such degrees as well in divinity, philosophy, civil and municipal laws, as in every other art, science and faculty whatsoever as are or may be conferred by all or any of the universities in Europe, and that the chancellor or in his absence the vice-chancellor of the said university for the time being do sign and seal with the seal of the said corporation diplomas or certificates of such degrees having been given, other than the degree of bachelor of arts, which shall and may be granted by the president of the college in which the person taking the same shall have been graduated, and the diplomas shall be signed by the said president. That the persons to be elected fellows professors or tutors as aforesaid, be also regents of the said university, *ex officiis* and capable of voting in every case relative only to the respective colleges to which they shall belong, excepting in such cases wherein they shall respectively be personally concerned or interested.

AND BE IT FURTHER ENACTED BY THE AUTHORITY AFORESAID That the college within the city of New York heretofore called Kings College, be forever hereafter called and known by the name of Columbia College.

Article First of Title i of Chapter XV of Part 1 of the Revised Statutes contains the following:—(Vol. 1, p. 456).

"Section 1. An university is instituted in this "State, of which the government is, and shall con- "tinue to be, vested in a board of regents.

"§ 2. This university is incorporated under, and is "and shall be known by, the name of 'The Regents "'of the University of the State of New York'; and "by that name shall have perpetual succession, "power to sue and be sued, to make and use a com- "mon seal and alter the same at pleasure, to hold "property, real and personal, to the amount of the "annual income of forty thousand bushels of wheat, "and to buy and sell, and otherwise dispose of, "lands and chattels."

Chapter 378, Laws 1892.

"§ 3. CORPORATE NAME AND OBJECTS.—

"The corporation created in one thousand seven "hundred and eighty-four under the name of "Regents of the University of the state of New "York shall continue and be known as University "of the state of New York. Its objects shall "be to encourage and promote higher education, "to visit and inspect its several institutions and "departments to distribute to or expend or ad- "minister for them such property and funds as "the state may appropriate therefor or as the "University may own or hold in trust or other- "wise, and to perform such other duties as may "be intrusted to it.

"§4. REGENTS.—The University shall be governed "and all its corporate powers exercised by nine- "teen elective regents, and by the governor, "lieutenant-governor, secretary of state, and "superintendent of public instruction, who shall "be ex-officio regents. In case of the death, resig- "nation, refusal to act or removal from the state, "of any elective regent, his successor shall be "chosen by the legislature in the manner provided "by law for the election of senators in congress, "except that the election may take place at such "time during the session of the legislature as it "may determine. No person shall be at the same "time an elective regent of the University and a "trustee, president, principal, or any other officer "of any institution belonging to the University."

"§ 10. DEPARTMENTS AND THEIR GOVERNMENT. "—The state library and state museum shall be "departments of the University, and the regents "may establish such other departments as they "deem necessary to discharge the duties imposed "on them by law. All University departments

"shall be under exclusive control of the regents "who shall have all powers of trustee thereof, in- "cluding authority to appoint all needed officers "and employees; to fix their titles, duties, salaries "and terms of service; to make all needed regula- "tions; and to buy, sell, exchange or receive by "will, gift, *or on* DEPOSIT, articles or collections "properly pertaining thereto;"

"§ 54. CONSTRUCTION.—The provisions of this "act, so far as they are substantially the same as "those of the laws herein repealed, shall be con- "strued as a continuation of such laws, modified "or amended according to the language employed "in this act, and not as new enactments. Repeals "in this act shall not revive any law repealed by "any law hereby repealed, but shall include all "laws amendatory of the laws hereby repealed. "References in laws not repealed to provisions of "law incorporated in this chapter and repealed "shall be construed as applying to the provisions "so incorporated. Nothing in this act shall be "construed to repeal any provision of the Criminal "or Penal Code."

"SCHEDULE OF LAWS REPEALED.

"LAWS OF	CHAPTER.	SECTION.
"Revised Laws of 1813.	59	All."*
"Revised Statutes, part 1.	15, title 1.	All."

*Chapter 51, Laws 1784 (printed above) as amended by chapter 82, Laws 1787 (1 Greenl. 434).

Chapter 586, Laws 1896.

"AN ACT to provide for the collection of historical and ethnologic records and relics of the "American Indians of the state of New York, and "making an appropriation therefor."

"Section 1. There shall be made, as the Indian "section of the state museum, as complete a collection as practicable of the historical, ethnographic "and other records and relics of the Indians of the "state of New York, including implements or "other articles pertaining to their domestic life, "agriculture, the chase, war, religion, burial and "other rites or customs, or otherwise connected "with the Indians of New York.

"§ 2. The trustees of the state museum ('the "regents') shall appoint on its staff a competent "curator*, without salary, to make and arrange "this Indian collection, and for his necessary expenses, and for collecting or buying specimens "for the Indian collection, there shall be paid by "the treasurer, on the warrant of the comptroller, "from any money not otherwise appropriated, not "to exceed five thousand dollars."

*Mr. Richmond, the witness of that name in this case, was appointed and served without compensation, until his death last fall.

Chapter 791, Laws 1897, Section 1 (Vol. 1, p. 858).

"For additions to the Indian Museum, in accord-
"ance with chapter five hundred and eighty-six
"of the laws of eighteen hundred and ninety-six,
"providing that the curator shall serve without
"salary, the sum of two thousand dollars."

Chapter 606, Laws 1898, Section 1 (Vol. 2, p. 1436).

"For additions to the Indian Museum, in ac-
"cordance with chapter five hundred and eighty-
"six, laws of eighteen hundred and ninety-six,
"provided that the curator shall serve without
"salary, two thousand dollars."

"Chap. 153 Laws 1899.

"AN ACT to collect and preserve from loss or "injury any and all wampums which the Onon- "daga nation of Indians, or its wampum keeper, "or any of the Ho-de-no-sau-nee, otherwise known "as the Five Nations, or the Six Nations, or the "Iroquois, is entitled to possess."

"Section 1.—The university of the state of New "York, which was duly elected to the office of "wampum-keeper by the Onondaga nation, on "February twenty-sixth, eighteen hundred and "ninety-eight, and which by unanimous action of "its regents on March twenty-second, eighteen "hundred and ninety-eight, accepted such election "as authorized to do by law, and which accepted "the custody of the wampums as formally trans- "ferred to the chancellor as part of the exercises "and with the unanimous approval, both of the "election and transfer, by the council of the Five "Nations, held in the senate chamber of the capi- "tol at Albany on June twenty-second, eighteen "hundred and ninety-eight, by duly chosen repre- "sentatives of all the original nations of the Ho- "de-no-sau-nee, shall hereafter be recognized in "all courts and places, as having every power "which has ever, at any time, been exercised by "any wampum-keeper of the Onondaga Nation, or "of any of the Ho-de-no-sau-nee, otherwise known "as the Five Nations, or the Six Nations, or the "Iroquois, and shall keep such wampums in a fire "proof building, as public records, forever, and is "hereby authorized to secure by purchase, suit, or "otherwise, any wampums which have ever been in "the possession of any of the Ho-de-no-sau-nee, or "any preceding wampum-keeper, and which is now "owned by any of them or to which any of them "is entitled, or to which it is entitled in law or in

"equity; and to maintain and carry on suit to "recover any of such wampums in its own name "or in the name of the Onondaga nation at any "time notwithstanding that the cause of action "may have accrued more than six years, or any "time, before the commencement of any such "suit.

"§ 2. The provisions of this act shall not apply "to the subject matter of any litigation now pend- "ing in any court of this state.

"§ 3. This act shall take effect immediately."

Chapter 569, Laws 1899 (vol. 2, p. 1206).

"For additions to the Indian Museum, in accordance "with chapter five hundred and eighty-six laws of "eighteen hundred and ninety-six provided the curator "shall serve without salary, one thousand dollars."

ARTICLES

Concluded at Fort Stanwix, on *the twenty-second Day of October, one thousand seven hundred and eighty-four*, between Oliver Wolcott, Richard Butler, *and* Arthur Lee, *Commissioners Plenipotentiary from the United States, in Congress assembled, on the one Part, and the* Sachems *and* Warriors *of the* Six Nations, *on the other.*

The United States of America give peace to the Senecas, Mohawks, Onondagas and Cayugas, and receive them into their protection upon the following conditions:

Article I.

Six hostages shall be immediately delivered to the commissioners by the said nations, to remain in possession of the United States, till all the prisoners, white and black, which were taken by the said Senecas, Mohawks, Onondagas and Cayugas, or by any of them, in the late war, from among the people of the United States, shall be delivered up.

Article II.

The Oneida and Tuscarora nations shall be secured in the possession of the lands on which they are settled.

Article III.

A line shall be drawn, beginning at the mouth of a creek about four miles east of Niagara, called Oyonwayea, or Johnston's Landing-Place, upon the lake named by the Indians Oswego, and by us Ontario; from thence southerly in a direction always four miles east of the carrying-path, between Lake Erie and Ontario, to the mouth of the Tehoseroron or Buffaloe Creek on Lake Erie; thence south to the north boundary of the state of Pennsylvania;

thence west to the end of the said north boundary; thence south along the west boundary of the said state, to the river Ohio; the said line from the mouth of the Oyonwayea to the Ohio, shall be the western boundary of the lands of the Six Nations, so that the Six Nations shall and do yield to the United States, all claims to the country west of the said boundary, and then they shall be secured in the peaceful possession of the lands they inhabit east and north of the same, reserving only six miles square round the Port of Oswego, to the United States, for the support of the same.

ARTICLE IV.

The Commissioners of the United States, in consideration of the present circumstances of the Six Nations, and in execution of the humane and liberal views of the United States upon the signing of the above articles, will order goods to be delivered to the said Six Nations for their use and comfort.

2 Folwell, 299.

7 Stat. at Large, 15.

GEORGE WASHINGTON, PRESIDENT OF THE UNITED STATES OF AMERICA.

To all to whom these presents shall come GREETING:

WHEREAS a treaty of Peace and Friendship between the United States of America and the Tribes of Indians called the Six Nations, was made and concluded on the Eleventh day of November last by Timothy Pickering the Agent of the United States for that purpose appointed, on the one part and the Chiefs and Warriors of the Six Nations on the other part which Treaty is in the form and words following:

A TREATY

BETWEEN THE

UNITED STATES OF AMERICA,

AND THE

TRIBES OF INDIANS

CALLED THE

SIX NATIONS.

The President of the United States having determined to hold a conference with the Six Nations of Indians, for the purpose of removing from their minds all causes of complaint, and establishing a firm and permanent friendship with them; and Timothy Pickering being appointed sole agent for that purpose; and the agent having met and conferred with the Sachems, Chiefs and Warriors of the Six Nations, in a general council: Now, in order to accomplish the good design of this conference, the parties have agreed on the following articles; which, when ratified by the President, with the advice and consent of the Senate of the United States, shall be binding on them and the Six Nations.

ARTICLE I.

Peace and friendship are hereby firmly established, and shall be perpetual, between the United States and the Six Nations.

ARTICLE II.

The United States acknowledge the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the State of New York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

ARTICLE III.

The land of the Seneka nation is bounded as follows: Beginning on Lake Ontario, at the northwest corner of the land they sold to Oliver Phelps, the line runs westerly along the lake as far as O-yong-wong-yeh Creek, at Johnson's Landing-place, about four miles eastward from the fort of Niagara; then southerly up that creek to its main fork, then straight to the main fork of Stedman's creek, which empties into the river Niagara, above Fort Schlosser, and then onward, from that fork, continuing the same straight course, to that river; (this line, from the mouth of O-yong-wong-yeh Creek to the river Niagara, above fort Schlosser, being the eastern boundary of a strip of land, extending from the same line to Niagara river, which the Seneka nation ceded to the King of Great Britain, at a treaty held about thirty years ago, with Sir William Johnson;) then the line runs along the river Niagara to Lake Erie; then along Lake Erie to the northeast corner of a triangular piece of land which the United

States conveyed to the State of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due south to the northern boundary of that state; then due east to the south-west corner of the land sold by the Seneka nation to Oliver Phelps; and then north and northerly, along Phelps's line, to the place of beginning on Lake Ontario. Now, the United States acknowledge all the land within the above mentioned boundaries, to be the property of the Seneka nation; and the United States will never claim the same, nor disturb the Seneka nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

ARTICLE IV.

The United States having thus described and acknowledged what lands belong to the Oneidas, Onondagas, Cayugas and Senekas, and engaged never to claim the same, nor to disturb them, or any of the Six Nations, or their Indian friends residing there, and united with them, in the free use and enjoyment thereof: Now, the Six Nations, and each of them, hereby engage that they will never claim any other lands within the boundaries of the United States; nor ever disturb the people of the United States in the free use and enjoyment thereof.

ARTICLE V.

The Seneka Nation, all others of the Six Nations concurring, cede to the United States the right of making a waggon road from Fort Schlosser to Lake Erie, as far south as Buffaloe Creek; and the people of the United States shall have the free and undisturbed use of this road, for the purposes of travelling and transportation. And the Six Nations, and each of them, will forever allow to the

people of the United States a free passage through their lands, and the free use of the harbours and rivers adjoining and within their respective tracts of land, for the passing and securing of vessels and boats, and liberty to land their cargoes where necessary for their safety.

ARTICLE VI.

In consideration of the peace and friendship hereby established, and of the engagements entered into by the Six Nations; and because the United States desire, with humanity and kindness, to contribute to their comfortable support; and to render the peace and friendship hereby established, strong and perpetual; the United States now deliver to the Six Nations, and the Indians of the other nations residing among and united with them, a quantity of goods of the value of ten thousand dollars. And for the same considerations, and with a view to promote the future welfare of the Six Nations, and of their Indian friends aforesaid, the United States will add the sum of three thousand dollars to the one thousand five hundred dollars, heretofore allowed them by an article ratified by the President, on the twenty-third day of April, 1792; making in the whole four thousand five hundred dollars; which shall be expended yearly forever in purchasing cloathing, domestic animals, implements of husbandry, and other utensils suited to their circumstances, and in compensating useful artificers, who shall reside with or near them, and be employed for their benefit. The immediate application of the whole annual allowance now stipulated to be made by the Superintendent appointed by the President for the affairs of the Six Nations, and their Indians friends aforesaid.

ARTICLE VII.

Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals,

the United States and Six Nations agree, that for injuries done by individuals on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other: By the Six Nations or any of them, to the President of the United States, or the Superintendent by him appointed: and by the Superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs: and such prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken; until the legislature (or great council) of the United States shall make equitable provisions for the purpose.

NOTE.—It is clearly understood by the parties to this treaty, that the annuity stipulated in the sixth article is to be applied to the benefit of such of the Six Nations and of their Indian friends united with them as aforesaid, as do or shall reside without the boundaries of the United States: For the United States do not interfere with nations, tribes or families of Indians elsewhere resident.

IN WITNESS whereof, the said Timothy Pickering, and the Sachems and War chiefs of the said Six Nations, have hereto set their hands and seals.

DONE *at Kon-on-daigua, in the State of New York, the eleventh day of November, in the Year one thousand seven hundred and ninety-four.*

TIMOTHY PICKERING	(L. S.)
O-no-ye-ah-nee, x	(L. S.)
Kon-ne-at-or-lee-ooh, x *or Handsome Lake.*	(L. S.)
To-kenh-you-hau, x *alias Capt. Key.*	(L. S.)
O-nes-hau-ee, x	(L. S.)
Hendrick Aupaumut,	(L. S.)

David Neesoonhuk, x (L. S.)
Kanatsoyh, *alias Nicholas Kusick.* (L. S.)
So-hon-te-o-quent, x (L. S.)
Oo-duht-sa-it, x (L. S.)
Ko-nooh-qung, x (L. S.)
Tos-song-gau-lo-lus, x (L. S.)
John Sken-en-do-a, x (L. S.)
O-ne-at-or-lee-ooh, x (L. S.)
Kus-sau-wa-tau, x (L. S.)
E-yoo-ten-yoo-tau-ook, x (L. S.)
Kohn-ye-au-gong, *alias Jake Stroud.* (L. S.)
Sha-gui-e-sa, x (L. S.)
Teer-oos, x *alias Capt. Prantup.* (L. S.)
Soos-ha-oo-wau, x (L. S.)
Henry Young Brant, x (L. S.)
Sonh-yoo-wau-na, x *or Big Sky.* (L. S.)
O-na-a-hah, x (L. S.)
Hot-osh-a-henh, x (L. S.)
Kau-kon-da-nai-ya, x (L. S.)
Non-di-yau-ka, x (L. S.)
Kos-sish-to-wau, x (L. S.)
Oo-jau-geht-a, x *or Fish Carrier.* (L. S.)
To-he-ong-go, x (L. S.)
Oot-a-guas-so, x (L. S.)
Joo-non-dau-wa-onh, x (L. S.)
Ki-yau-ha-onh, x (L. S.)
Oo-tan-je-au-genh, x *or Broken Axe.* (L. S.)
Tau-ho-on-dos, x *or Open the Way.* (L. S.)
Twan-ke-wash-a, x (L. S.)
Se-qui-dong quee, *alias Little Beard.* (L. S.)
Kod-je-ote, x *or Half Town.* (L. S.)
Ken-jau-au-gus, x *or Stinking Fish.* (L. S.)
Soo-noh-quau, Kau, x (L. S.)
Twen-ni-ya-na, x (L. S.)
Jish-kaa-ga, x *or Green Grass-hopper, alias Little Billy.* (L. S.)

Tug-geh-shot-ta, x (L. S.)
Téh-ong-ya-gau-na, x (L. S.)
Téh-ong-yoo-wush, x (L. S.)
Kon-ne-yoo-we-sot, x (L. S.)
Ti-ooh-quat-ta-kau-na, x *or Woods on Fire.* (L. S.)
Ta-oun-dau-deesh, x (L. S.)
Ho-na-ja-wus, x *alias Farmer's Brother.* (L. S.)
Sog-goo-ya-waut-hau, x *alias Red Jacket.* (L. S.)
Kon-yoo-ti-a-yoo, x (L. S.)
Sauh-ta-ka-ong-yees, x (*or Two Skies of a length.*) (L. S.)
Oun-na-shatta-kau, x (L. S.)
Ka-ung-ya-néh-quee, x (L. S.)
Soo-a-yoo-wau, x (L. S.)
Kau-je-a-ga-onh, x *or Heap of Dogs.* (L. S.)
Soo-nooh-shoo-wan, x (L. S.)
T-ha-oo-wau-ni-as, x (L. S.)
Soo-nong-joo-wau, x (L. S.)
Kiant-whau-ka, x, *alias Cornplanter.* (L. S.)
Kau-neh-shong-goo, x (L. S.)

WITNESSES.

Israel Chapin,	William Shepherd, jun.,
James Smedley,	John Wickham,
Augustus Porter,	James K. Garnsey,
Wm. Ewing,	Israel Chapin, jun.

Interpreters { Horatia Jones, Joseph Smith, Jasper Parish.

Henry Abeele.

NOW KNOW YE, that I having seen and considered the said Treaty, do by and with the advice and consent of the Senate of the United States accept ratify and confirm the

same and every article and clause thereof. In Testimony whereof, I have caused the seal of the United States to be hereunto affixed, and signed the same with my hand.

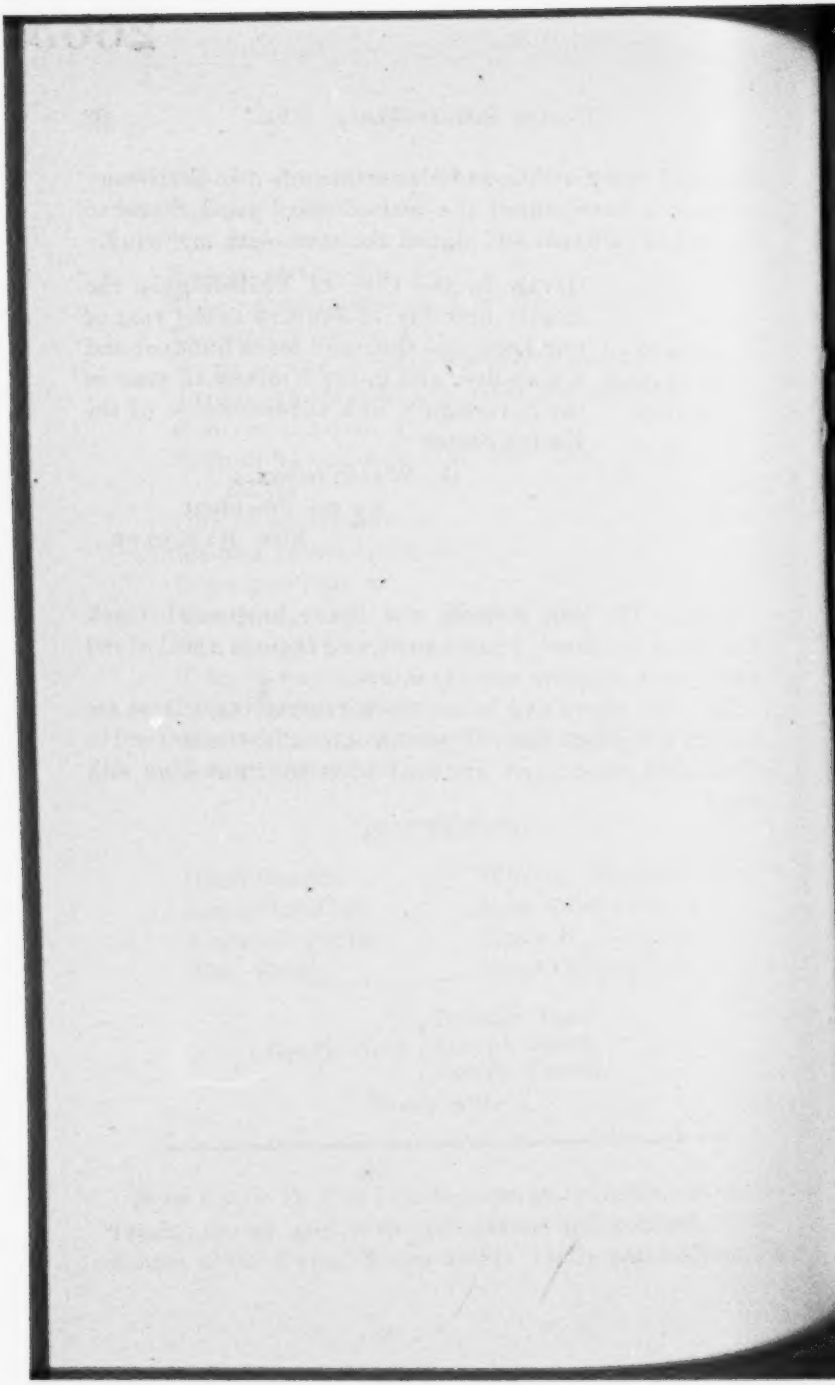
SEAL OF THE UNITED STATES

GIVEN in the City of Philadelphia, the twenty-first day of January in the year of our Lord one thousand seven hundred and ninety-five, and in the Nineteenth year of the Sovereignty and Independence of the United States

G° WASHINGTON
By the President
EDM. RANDOLPH

NOTE.—The part *between* the heavy horizontal black lines is on one sheet of parchment, and there is a seal of red sealing wax opposite each signature.

The parts above and below the horizontal black lines are each on a separate strip of parchment—of the entire width of the main sheet—and attached to it by light blue silk braid.



Appropriation Bill of March, 1901.

31 Stat. at Large, p. 1064.

"SIX NATIONS OF NEW YORK.

"For permanent annuity, in clothing and other useful "articles, per sixth article of treaty of November elev- "enth, seventeen hundred and ninety-four, four thousand "five hundred dollars."

"Approved March 3, 1901" (p. 1085).

There is an United States agent for this (1 Off. Reg. 772).

And they are just as numerous as they were in the days of their great Indian Empire (R. 90).

The Jesuit Relation of 1664–65 (pp. 46–47) gives the following estimate of warriors:

Mohawks	300–400
Oneidas	140
Onondagas	300
Cayugas	300
Senecas	1200
	2340

By the usual historical estimates—five to one—this will give a population of 11,700.

In describing the funeral of "le Rat" Parkman says: ("Count Frontenac and New France," Champlain ed., Boston 1897–2, p. 229) "Pre-eminent among them all "sat their valiant and terrible foes, the warriors of the "confederacy. 'Strange,' exclaims La Potherie, 'that

" ' four or five thousand should make a whole new world
" ' tremble. New England is but too happy to gain their
" ' good graces; New France is often wasted by their
" ' wars, and our allies dread them over an extent of
" ' more than fifteen hundred leagues.' It was more a
" marvel than he knew, for he greatly overrates their
" number."

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Supreme Court of the United States

OCTOBER TERM, 1902.

Number 234.

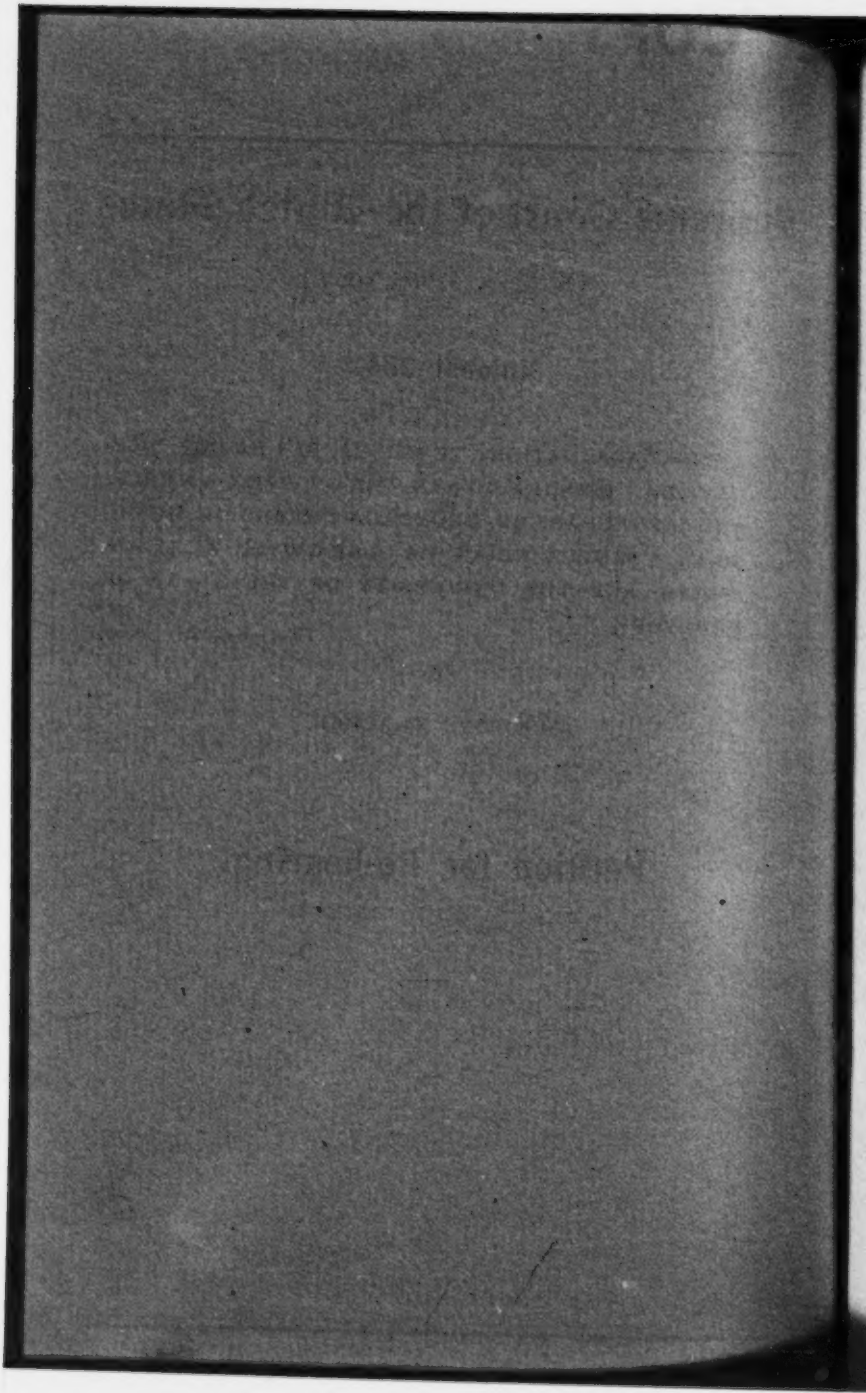
THE ONONDAGA NATION; TE-HES-HA, SAY-HA-QUE, HOS-HAY-QUA, SHO HEH-DO-NAH, HA-ON-WEH-GO-WEHLE, AND JARVIS FARMER, ONONDAGA INDIANS; HO-DO-OH-GO-AH, A SENECA INDIAN; HA-JA-AH-GWYSH, A CAYUGA INDIAN, AND THE UNIVERSITY OF THE STATE OF NEW YORK,

Plaintiffs in Error,

VS.

JOHN BOYD THACHER.

Petition for Re-hearing.



A PETITION BY THE PLAINTIFFS IN ERROR FOR A RE-HEARING.

The Court says:

"Certainly the Court of Appeals of New York did not "suppose that a Federal question was lurking in the "record presented for its consideration."

"In any event, as we find that the claim of Federal "right was not especially set up or called to the attention "of the State court in any way, we are without jurisdic- "tion to review the judgment of the State court. (*Tellu- "ride Power Transmission Co.* v. *Rio Grande Western "Railway Co.*, 187 U. S., 569, 580."

The judiciary act—(James Duane's, 1789)—says that to give the Court jurisdiction there must be something "specially claimed or set up"—under the constitution or

a treaty—but it is to be in the *highest* court of the State, that it is to be set up (1 Folwell, 64). As the words have gone into the Revised Statutes they are a little changed, but as follows:

R. S., 1878, p. 133:

"Sec. 709. A final judgment or decree in any suit *in* "*the* HIGHEST *court of a State, in which a decision in the* "*suit could be had*, where is drawn in question the valid- "ity of a treaty or statute of, or an authority exercised "under, the United States, and the decision is against "their validity, or where is drawn in question the valid- "ity of a statute of, or an authority exercised under "any State, on the ground of their being repugnant to "the Constitution, treaties or laws of the United States, "and the decision is in favor of their validity; or *where* "*any title, right, privilege, or immunity is claimed* "*under the Constitution, or any* TREATY *or statute of, or* "*commission held or authority exercised under, the* "*United States, and the decision is against the title,* "*right, privilege, or immunity* SPECIALLY SET UP OR "CLAIMED by either party, *under such Constitution,* "TREATY, *statute, commission, or authority*, may be re- "examined and reversed or affirmed in the Supreme "Court upon writ of error."

As the Court of Appeals of New York, which is the highest Court of the State in this action, does not use pleadings—it follows that the Federal question need not be set up in a pleading.

I.

The Federal Question was "specially set up" *and* "claimed" in the Court of Appeals of New York.

At page two hundred and ten of the record is the following:

"It is stipulated that the foregoing 'excerpts' from the "briefs 'for the appellants' may be added to the record in "the Supreme Court of the United States and that the "points therein were taken in the State court and thus "*is* a part of the record."

These "excerpts" are *first*—the treaty of 1794 (R., 203–206), of which one of the wampums is the Indian record.

Next the appropriation act of 1901 (R., 206), which shows that the political department of the Government was then recognizing the being of the Six Nations and of the Onondaga Nation.

Next the case of the "*New York Indians*" (6 Wall. 761) in which the Court, speaking by Mr. Justice Nelson, said (1866) that the treaties—with the Six Nations and the Onondagas—beginning *1784* (before the Constitution) and ending 1842, were the Supreme law of the land (R., 202, 5 Wall. 764). Next the case of the *Kansas Indians* (5 Wall. 757), in which the Court, speaking by Mr. Justice Davis and of Indians in like cases:

"*As long as the United States recognises their national* "*character they are under the protection of treaties and* "*the laws of Congress*, and their property is withdrawn "from the operation of State laws" (R., 201).

There is also—the Constitution of the Onondagas—that it had the keeping of the wampum records and that its council told the University of the State of New York to keep the wampum records.

The Federal Question—*if there be one*—was then "specially set up and claimed."

It is true that the Court of Appeals of New York said nothing about it. Why, I do not know, but it certainly was not for the want of having been told about.

II.

There is a Federal Question.

The national existence—the powers of self-government—and the right to protect their property are all guaranteed by the treaties.

What good is the recognition of the national existence by the Government if anybody can take the property of the nation and walk off with it and then defiantly stand up in the Court and say that the nation has not got the *power* to put it in a safe deposit company for safe keeping?

I submit that it *has* got the power to put the national property—for safe keeping—in a safe deposit company, and that that power is confirmed to it by the treaties which are "historical" and "the supreme law of the "land," the first of them (1784) having been "*adopted* "*and sanctioned*" by the CONSTITUTION.

"' * * * The very term "nation," so generally "' applied to them, means a "people distinct from "' "others." The Constitution, by declaring treaties "' already made, as well as those to be made, to be the "' supreme law of the land, has adopted and sanctioned "' the previous treaties with the Indian nations, and "' consequently admits their rank among those powers "' who are capable of making treaties.'

"In reviewing the whole subject in *Kagama* v. *United* "*States*, 118 U. S., 375, this court said (p. 381):

"' With the Indians themselves these relations are "' difficult to define. They were, and always have been, "' regarded as having a semi-independent position when "' they preserved their tribal relations; not as States, "' not as nations, not as possessed of the full attributes "' of sovereignty, but as a separate people with *the* "' *power of regulating their internal and social rela-* "' *tions*, and thus far not brought under the laws of the "' Union, *or of the State within whose limits they* "' *resided*.'

(Talton *v.* Myers, 163 U. S., 376, 383, the Court, speaking by Mr. Justice White and quoting Mr. Chief Justice Marshall.)

As the Government *thus* confirms the "power of regu- "lating their internal relations"—the right of the Govern- ment of the Onondagas to put the personal property, held in trust by that "nation," in a safe deposit company is a "*right, privilege* AND IMMUNITY claimed under the Con- "stitution," AND *four* treaties.

III.

The Findings.

Mr. Justice Harlan said that the rule as to findings of fact was different in cases which come from a State court from what it is in cases which come from a Federal court —in that in the latter case the Court will not be bound by a finding which is against evidence, while in the former case it will: and, the Court, speaking by Mr. Justice Peckham, has quite lately and formally said the same thing.

This however is not any matter of embarrassment.

By the law of New York a finding, though it be *in form* of fact, is, if there be not any evidence under it, NOT *a finding of fact, but an* ERROR OF LAW, which can be excepted to and is cognizable in the Court of Appeals of New York—the jurisdiction of which is, by the Constitution of New York,—*only* of matters of law.

The Court, of course, sits as does the Court of Appeals of New York, otherwise, *of what* GOOD *is the writ of error?*

Thus, though there is in the record a finding in *form* of *fact* that Mr. Thacher owns the wampum records,—since it has under it not any evidence *except* the evidence of Webster's *possession*, which it is *quite* plain is not any evidence at all, it is NOT a *finding of* FACT, but *an* ERROR *of* LAW.

It is quite plain from the record that Mr. Thacher is keeping things which do not belong to him by the use of what by the Common Law—the Common Law is in force in New York—are called "unmeritorious" defenses.

The Ho-de-no-sau-nee are doing very well. They are entirely respectable, quite prosperous, and need and want only to be let alone (R. 91). Every year—about, somebody tries to get their land. This year a bill to divide up the Senecas' land really got through the House. Mr. Vreeland, the Member of Congress from the district where their land is, tried it.

It is quite a pity that they have not even sufficient *being* to put their records in a safe deposit company or some such a place—so that somebody who comes and takes it away cannot be made to give it back.

AS-QUE-SENT-WAH
(EDWARD WINSLOW PAIGE).

I certify that this is not for delay.

EDWARD WINSLOW PAIGE,
Of Counsel.

In the *United States* v. *Kagama*, 118 U. S. 375, the Court, speaking by Mr. Justice Miller, said (p. 383):

"These Indian tribes ARE the wards of the nation. "They are communities *dependent* on the United States. "Dependent largely for their daily food. Dependent for "their political rights. *They owe no allegiance to the "States, and receive from them no protection.* Because "of the local ill-feeling, the people of the States where "they are found are often their deadliest enemies. From "their very weakness and helplessness so largely due to "the course of dealing of the Federal Government with "them and the treaties in which it has been promised, "there arises the duty of protection and with it the power. "This has always been recognized by the Executive and "by Congress, and by this court, whenever the question has arisen."

Supreme Court of the United States

OCTOBER TERM 1902,

No. 234.

THE ONONDAGA NATION, TE-HES-HA, an Onondaga Indian, on his own behalf and on behalf of all the HO-DE-NO-SAU-NEE, SAY-HAQUE, HOSHAYQUA, SHO-HEH-DO-NAH, HA-ON-WEN-GO-WEN-GLE and JARVIS FARMER, Onondaga Indians; HO-DO-OH-GO-AH, a Seneca Indian, HA-JA-AH-GWYSH, a Cayuga Indian, and THE UNIVERSITY OF THE STATE OF NEW YORK, Plaintiffs in error.

against

JOHN BOYD THACHER, Defendant in error.

In Error to the Supreme Court of the State of New York.

BRIEF FOR DEFENDANT-IN-ERROR.

STATEMENT OF THE CASE.

This is a writ of error to review a judgment of the Supreme Court of the State of New York entered upon the order and remittitur of the Court of Appeals of said State of New York. (Pages 192 and 193.)

Said order of the Court of Appeals affirmed a judgment of the Appellate Division of the Supreme Court in the Fourth Judicial Department which had affirmed a judgment in favor of defendant entered upon a dismissal of plaintiff's complaint on the merits on a trial at the Onondaga Trial Term. (Fols. 121-126, 466, 468, 502-507, 517-521.)

The action was brought to recover possession of four "wampum belts," purchased by the defendant from the Rev. Dr. Oliver Crane on or about the 24th day of March, 1893. (Complaint, fols. 8-10 ; finding of fact XI, fol. 96; testimony, fols. 347-352.)

Dr. Crane acquired title to the "belts" during the month of July, 1892, by purchase from Gen. Henry B. Carrington, of the United States Regular Army. (Fols. 95, 236-238.)

The latter bought them on the 10th day of February, 1891, from Thomas Webster, a member of the Onondaga tribe of Indians living on the Onondaga Reservation in the State of New York. (Fols. 95, 223-228.)

On the occasion of each purchase and sale above referred to a cash payment was made by the buyer to the seller as a consideration for the transfer, the amount of such payment being determined by an agreement between the respective parties immediately concerned in each particular transaction.

There is no dispute on the part of those prosecuting this action in respect to the validity of either of such sales, except such as arises from the charge made in the complaint that at the time of the sale to General Carrington the "wampum" was not the property of Thomas Webster, but belonged to a confederacy of Iroquois Indians, designated in the title of this action as "Ho-De-No-Sau-Nee."

This confederacy was originally composed of five tribes or nations of Indians known as the Mohawks, Oneidas, Onondagas, Cayugas and Senecas, and is referred to in history as the "League of the Five Nations."

About the year 1713, another tribe, known as the Tuscaroras, was received into the confederacy, and the latter was thereafter designated as the "League of the Six Nations." (Fol. 246:)

It is alleged in the complaint that certain of the wampum belts constituting the subject-matter of this controversy are a part of the historical records and archives of the confederacy, and, for that reason, are inalienable.

On the trial of the action the attention of the court was directed by the plaintiff's attorney to certain Indian traditions by which it was attempted to be proven that the record of historical events among the Iroquois Indians was perpetuated by a mysterious kind of process whereby that which was "talked into" the wampum was afterwards "talked out" again by the belt itself when the record or proof of that event was needed.

It is apparent from inspection that there is nothing in the substance of the wampum to justify the conclusion that the preservation of the "talk" above referred to was based on the principle of the modern graphophone, nor is it claimed that there was any actual preservation of the language used on the occasion of such ceremonials.

These so-called belts consist of strings of wampum beads or shells braided or pleated together in broad bands. There is nothing in the texture of the belts or the arrangement of the beads of which they are composed to indicate that there is embodied in them any word-signs, which, if read

by an interpreter having knowledge of the meaning of the separate signs, could convey to his hearers an intelligent understanding of the records which they are supposed to represent.

It was claimed, however, on behalf of the plaintiffs that the belts "operate upon the principle of "association. For illustration, a belt was delivered "differing in the arrangement of its beads from "all other wampums. It was the duty of the "'wampum-keeper' to remember and to tell upon "occasion what occurred when that belt was de- "livered. It was also the duty of all royaners "then present to remember and to tell upon occa- "sion the same thing. The idea was that as many "human beings as possible should hear what the "belt was delivered for and should tell it to as "many other human beings as possible, so that the "event for which the belt was to be a record "should be always known when there was any "use for its being known."

On behalf of the defendant it was contended that the belts were not made by or under the direction of the confederacy or any of the nations of which it was composed or for the exclusive use of either, although made by individual members of the tribes and possibly for the purpose of commemorating such events in their history as might be deemed by them important. According to the theory of the defendant they were designed simply to represent the conception or idea of the event to be commemorated which the individual who made the belt had in his mind, in the same manner as an artist commits to the canvas a picture or molds in metal or chisels in stone a representation of his conception of an event in history which he may have never actually witnessed.

To support this theory reference was made to the well-known fact that such pictures and other representations in many cases in our own history have continued for so long a period of time to represent the circumstances supposed to be connected with the event which they are designed to portray and have thereby become so familiar to the public that, although generally known to be inaccurate so far as representing a true picture of what actually occurred at the particular time, are, nevertheless, accepted as real photographs of the persons and objects combined to illustrate the event itself. Such, for example, are the well-known pictures of the "Discovery of America," the "Signing of the Declaration of Independence," and paintings of famous battles of the Revolutionary and Civil wars in our own country, as well as numerous similar examples that might be referred to in the history of other nations.

If this contention is correct, then there is no more reason for the conclusion that the wampum belts were at any time necessarily the property of the confederacy than that the pictures, moldings and carvings above mentioned were at any time the property of the nations with whose history they are connected.

It was further contended on the part of the defendant that conceding the correctness of the theory that the wampum belts were historical records, and, admitting that they were in ancient times actually owned by the Ho-de-no-sau-nee, so-called, it does not necessarily follow that they were still so used and owned at the time of the sale to General Carrington. To uphold this contention it was argued that the evidence in the case proves, beyond any reasonable doubt, that at the date of that transaction

there was no such institution or organization known by that or either of the other names by which the Iroquois confederacy was known during the period of its existence.

Attention was called to the historical fact that after the termination of the campaign of General Sullivan, in 1779, the League of the Six Nations ceased to exist as a confederacy, and the several tribes of which it was composed lost their identity, except so far as their individual members are now regarded as the wards of the United States Government. As stated in chapter 1, page 29, of the "League of the Ho-de-no-sau-nee," by Lewis H. Morgan, offered in evidence by the plaintiffs, "The "treaty of peace between Great Britain and the "United States, in 1783, made no provision for "the Iroquois, who were abandoned in adversity "by their ally and left to make such terms as they "could with the successful republic. A few years "afterwards a general peace was established with "the northwestern Indian nations, including the "Iroquois, all of whom had more or less become "involved in the general controversy. *With the "restoration of peace the political transactions of "the League were substantially closed. This was "in effect the termination of their political exist-"ence. The jurisdiction of the United States was "extended over their territories and from that time "forth they became dependent nations.*"

So that, even upon the assumption that the wampum belts originally might have had the significance which is claimed for them by plaintiffs, it was impossible that they should be regarded in the same aspect after the confederacy was disrupted. As stated in the report of General Carrington, which forms a portion of the last Federal census,

"The wampums are simply reminders of preserved "traditions without any details whatever. As "curious relics they are valuable." (Fol. 316.)

It was further contended that whatever may have been the functions of the office or position of "wampum-keeper" during the existence of the confederacy, there was no use for its continuance thereafter and the office itself was consequently abrogated, that the numerous wampums formerly in the possession of individual members of the various tribes became scattered and were ultimately preserved from total destruction only by reason of the interest taken by individual collectors of relics and heirloom hunters among the tribes, each of whom for that reason received the appellation of "wampum-keeper." These alleged "wampum-keepers," either from the same spirit which actuates a modern collector of curiosities or with a view and desire of exerting over their fellow-members an influence by reason thereof, devoted their attention to the collection and preservation of the wampum.

In conclusion, it was submitted on behalf of defendant that Thomas Webster was such a collector and the wampums purchased by General Carrington were a part of his collection and his private property at the time of the purchase. They had no possible official relation to the "Five Nations," the "Six Nations" or the "Ho-de-no-sau-nee," so-called. They were relics accidentally preserved by Webster, who acted in the self-constituted capacity of "wampum-keeper" long after the official character of such designation had ceased to have tribal recognition. He was not in any sense an official custodian of the property, but by courtesy he held the title of "keeper of the wampums." They were

the result of his years of collection, exhibited by him with a wise ignorance of their chief history. He claimed, through a solemn silence more than by positive information, to know their significance. They never were the property of the Onondaga tribe as a nation and certainly were not at the time of the sale. At that time all coherent relationship of the various nations as parts of the confederacy had ceased to exist and the constitution of the Onondagas recognized none of the functions once in vogue in connection with the position of "wampum-keeper."

The learned justice who decided the issues in this case at the Trial Term embodied a concise statement of his conclusions, as well as the reasons therefor, in the opinion delivered with his decision, which appears at folios 472-498 of the Appeal Book, and is reported in 29 Misc. Rep., 428. The following is an extract therefrom expressing his views concerning the link in the chain of defendant's title attacked in this litigation: "I am rather led to the "conclusion that at and long before the time men- "tioned, the league, to which these wampums are "said to have belonged, had been dissolved; that "we had come to associate even its name with a "period long gone by; that the natives which com- "posed it had become separated, and, to a large "extent, scattered and dispersed and wards of the "government, and that these wampums are curiosi- "ties and relics of a time and condition and con- "federation which has ceased to exist, and that "Webster had possesion of them as one who had "gathered them as such relics. The evidence "given, with reference to the Onondaga Nation and "with reference to Webster, indicates, to my mind, "that they had ceased to treat or regard them as

"the property of the Onondaga Nation, much less "as that of the Iroquois League, and that there "had been long acquiescence in Webster's posses- "sion of them as an individual owner." (Fols. 496-498.)

But whatever may have been the original object or purpose of the making of wampum belts, or whatever may have been their use, it was then and is now contended that the burden rested upon the plaintiffs to prove by a preponderance of competent evidence, not only that they were not actually owned by Webster, but were at the time of the sale from him to Carrington and also at the time of the trial the property of the plaintiffs and that the plaintiffs had the right to sue for and recover the same in an action of this kind.

The plaintiffs failed in both respects, for the trial court dismissed "the complaint, holding that "the plaintiffs had no right to maintain such an "action and that the defendant had good title to "the belts." (See opinion of Appellate Division, fol. 524.)

"After an extended examination of the record" the learned Appellate Division "concluded that the "judgment appealed from should be affirmed." (Fol. 536.)

The Court of Appeals decided that neither the Onondaga Nation nor the individual Indians named as plaintiffs had legal capacity to bring and maintain the action. That court also held that the evidence supported the finding of fact of the trial judge, which had been affirmed by the Appellate Division, that assuming that there was such an official position as that of "wampum-keeper" at the time when it is claimed the University was elected to that position, the University never was

selected as "wampum-keeper," and that it never purchased any of the wampums described in the complaint. (Page 189.)

Facts.

The following are the facts as found by the learned justice who presided at the trial of this action and subsequently affirmed by the Appellate Division and Court of Appeals:

I. During a period of many years prior to the year 1713, there existed a confederacy of Iroquois Indians, composed of the Onondagas, Oneida, Mohawk, Seneca and Cayuga tribes, designated in their own language as the Ho-de-no-sau-nee, but known and referred to in history as the League of the Five Nations. (Fol. 88.)

II. Thereafter and in or about the year 1713, another tribe known as the Tuscaroras was received into said confederacy and thereafter the league was known and referred to as the League of the Six Nations. (Fol. 89.)

III. During the earliest period of the existence of said confederacy, the Indians of which said league was composed made use of strings of wampum beads or shells braided or pleated together in broad bands and commonly known as wampum belts, as a means of commemorating and preserving the memory of important events, such as the making of treaties, the coming of the white man, etc., and while the League of the Iroquois was in active existence the tribes or members thereof composing it employed this method of preserving the history of the events which they conceived to be of importance. (Fol. 90.)

IV. While such custom was in vogue the care and custody of such wampum belts as were so used was entrusted to the Onondaga Nation, which appointed one of its members as an official sometimes designated as the "wampum-keeper," whose duty it was to preserve the same and upon ceremonial occasions expound them and emphasize their meaning and significance. (Fol. 90.)

V. The wampum belts mentioned and described in the complaint in this action constituted a portion of the wampum belts at one time made and possessed by the league and used for the foregoing purposes. (Fol. 91.)

VI. At a time many years prior to the 10th day of February, 1891, the ancient confederacy above referred to, composed, first of the five and then of the six tribes or nations of Indians above mentioned, was dissolved and thereafter had no active or actual existence. Its respective names had become associated with a period long gone by; the tribes of which it consisted had become separated, and, to a large extent, scattered and dispersed throughout the United States of America and the Dominion of Canada, and those who had remained in this country had become wards of the Government. (Fol. 92.)

VII. On and after the happening of the foregoing events, viz., the dissolution and disruption of the said Iroquois Confederacy, the use of the wampum belts for any of the foregoing purposes for which they were originally prepared became obsolete. The wampum thereupon became nothing more than curiosities and relics of a time, condition and confederation which had ceased to exist,

and the office or position of wampum-keeper, so far as its original significance is concerned, became useless and was abrogated. (Fol. 92.)

VIII. On the 10th day of February, 1891, and for many years prior thereto, one Thomas Webster, an Onondaga Indian, had become the owner and was in possession of several of the wampum belts above referred to, including those enumerated in the complaint herein. Said Webster was not then, and never was, an incumbent of the office or position of wampum-keeper of the Onondaga Nation or of any of the individual tribes composing the Iroquois Confederacy, and there was at that time no such official position known or recognized among the Indians composing any or either of said tribes or confederacy. The individual and personal ownership of said Thomas Webster in said wampum belts was recognized by the said several tribes which formerly constituted said league and by the individual members thereof, and said tribes and Indians had long prior to that time ceased to treat or regard said wampum belts as the property of either the Onondaga Nation or the Iroquois League. (Fols. 93 and 94.)

IX. On or about the 10th day of February, 1891, the said Thomas Webster, then being the individual owner and in possession of said several belts of wampum, in consideration of the payment to him of the sum of seventy-five dollars ($75), bargained, sold and delivered said wampum belts to one Henry B. Carrington. (Fol. 95.)

X. Thereafter, and in or about July, 1892, the said Henry B. Carrington, in consideration of the payment to him of the sum of three hundred and

fifty dollars ($350), bargained, sold and delivered said wampum belts to one Oliver Crane. (Fol. 95.)

XI. Thereafter, and on or about the 24th day of March, 1893, the said Oliver Crane, in consideration of the payment to him of the sum of five hundred dollars ($500), bargained, sold and delivered to said defendant, John Boyd Thacher, the said several belts of wampum described in the complaint, and the same have ever since remained in the possession of said defendant. (Fol. 96.)

XII. Said purchase on the part of the defendant was made in good faith and as a matter of public spirit. (Fol. 96.)

XIII. Prior to the commencement of this action neither the Onondaga Nation, the plaintiff (Te-hes-ha), the University of the State of New York, nor any of the other plaintiffs demanded of the defendant the delivery of either of the aforesaid wampum belts. (Fol. 97.)

XIV. The plaintiff, Te-hes-ha, has died since the commencement of this action, and no personal representative or other person has been substituted in his place. (Fol. 97.)

XV. The University of the State of New York never purchased any or either of the wampum belts mentioned and described in the complaint, and said University of the State of New York never was selected or "raised up" to the position or office of "wampum-keeper," and no official proceedings were ever begun on the part of any of the tribes of Indians which formerly composed said Iroquois Confederacy for the purpose of conferring any such position or office upon said University of the State

of New York, assuming that there is or was at the time of said alleged proceedings any such official position. (Fols. 88-98.)

PROOF.

The only proof offered by the plaintiffs on the principal case to support the allegations of the complaint, in addition to the testimony of one witness, viz., John S. Clark, were certain extracts from two books of "Indian Tradition," one published in 1851, of which Lewis Morgan is the author, and the other "Clark's History of Onondaga County," published in 1849, and certain extracts from a "Special bulletin" contained in "the Eleventh Census of the United States," composed in part of history and in part of tradition, interspersed with the views and conclusions of the author. (Fols. 265-341.)

The testimony of John S. Clark was based entirely on knowledge acquired from reading history, or consisted of statements made to him by persons who at the time of the trial were still alive. This evidence was taken subject to the objection that it was hearsay, which it undoubtedly was, unless some other rule of evidence than that usually followed is to be applied to this case. The principal part of it was, on motion, stricken out. There was, therefore, no substantial evidence before the court on the principal case to support any of the allegations of the complaint.

On the part of the defendant, to support his contention, testimony was produced from the mouths of witnesses, who, from knowledge acquired by study, as well as actual experience obtained from many years' acquaintance and association with the descendants of the Indians who formerly consti-

tuted the confederacy, were thoroughly familiar with the facts. They appeared for cross-examination before the attorney representing the plaintiffs, and afforded ample opportunity for testing the foundation of their knowledge. The defendant did not ask the court to sustain his contention by simply taking judicial notice of alleged facts contained in narratives which are more of the nature of romance than reliable history, and, at least, certain portions of which are as fantastic as any fairy tales ever written.

POINTS.

I.

There is nothing apparent upon the record which brings the case within the appellate jurisdiction of the Supreme Court of the United States.

Section 709 of the Revised Statutes of the United States provides that "a final judgment or decree "in any suit in the highest court of a State in "which a decision in the suit could be had, "where is drawn in question the validity of a stat- "ute of or an authority exercised under the United "States and the decision is against their validity, "or where is drawn in question the validity of a "statute of, or authority exercised under, any "State on the ground of their being repugnant to the "constitution, treaties or laws of the United States "and the decision is in favor of their validity; or "where any title, right, privilege or immunity is

"claimed under the Constitution, or any treaty "or statute of, or commission held or authority "exercised under the United States and the de- "cision is against the title, right, privilege or "immunity specially set up or claimed by either "party under such Constitution, treaty, statute, "commission or authority — may be re-examined "and reversed or affirmed in the Supreme Court "upon a writ of error," etc.

Mr. Justice Story, in Crowell v. Randall (10 Peters, 368, 392), says:

In the interpretation of the 25th section of the Judiciary Act of 1789 (which is the source of section 709 of the Revised Statutes), "it has been "uniformly held that to give this Court appellate "jurisdiction two things should have occurred and "be apparent on the record; first, that some one "of the questions stated in the section did arise in "the Court below; and, second, that a decision was "actually made thereon by the same Court in the "manner required by the section. If both of these "do not appear on the record the appellate juris- "diction fails. It is not sufficient to show that "such a question might have occurred or such a "decision might have been made in the Court be- "low; it must be demonstrable that it did exist "and was made."

All the decisions of this Court prior to that date are then reviewed in the opinion and the Court in conclusion reaffirms the interpretation which, according to their own language, "they had con- "stantly maintained" as follows:

"It is, that to bring the case within the 25th "section of the Judiciary Act it must appear upon "the face of the record, first, that some one of the

"the questions stated in that section did arise in "the State Court; second, that the question was "decided by the State Court, as required in the "same section; third, that it is not necessary that "the question should appear on the record to have "been raised and the decision made in direct and "positive terms, *ipsissimis verbis*, but that it is "sufficient if it appears by clear and necessary "intendment that the question must have been "raised and must have been decided in order to "have induced the judgment; fourth, that it is "not sufficient to show that a question might have "arisen or been applicable to the case unless it is "further shown on the record that it did arise and "was applied by the State Court to the case."

And again in the case of Armstrong v. Treasurer of Athens County (16 Peters, 281, 285), this Court has declared that: "In order to give this Court "jurisdiction under the 25th section of the Act "of 1789, it must appear on the record itself to "be one of the cases enumerated in that section "and nothing out of the record certified to this "Court can be taken into consideration. This "must be shown, first, either by express averment "or necessary intendment in the pleadings in the "case; or, second, by the direction given by the "Court and stated in the exception; or, third, when "the proceeding is, according to the law of Louis-"iana, by the statement of facts and of the de-"cision as usually made in such cases by the "Court; or, fourth, it must be entered on the record "of the proceedings in the Appellate Court in cases "where the record shows that such a point may "have arisen and been decided, that it was in fact "raised and decided; and this entry must appear "to have been made by the order of the Court, or

"by the presiding judge by order of the Court, and "certified by the clerk, as a part of the record in "the State Court; or, fifth, in proceedings in "equity, it may be stated in the body of the final "decree of the State Court from which the appeal "is taken to this Court; or, sixth, it must appear "from the record that the question was necessarily "involved in the decision; and that the State Court "could not have given the judgment or decree, "which they passed without deciding it. We are "not aware of any other mode in which the judg- "ment or decree of a State Court can lawfully be "brought before us; and we have stated them par- "ticularly in order to prevent, in the future, the "difficulties and discrepancies which have so often "arisen on this subject."

While it is affirmatively declared in the writ of error herein that there was "drawn in question "the validity of a statute or treaty of or an author- "ity exercised under the United States and the "decision was against their validity, or the validity "of a statute or an authority exercised under said "— on the ground of their being repugnant to the "constitution, treaties or laws of the United "States and the decision was in favor of their "validity," and while it is further declared in such writ of error that in this suit there "was drawn "in question the construction of a clause of the "constitution or of a treaty or statute of or com- "mission held under the United States and the "decision was against the right, title, privilege or "exemption claimed under such constitution, "treaty, statute or commission" (see page 193 of the Transcript of Record), it is respectfully submitted, as will be readily perceived by reference to the respective decisions rendered herein by the several Courts of the State of New York and the

reasons assigned therefor by the said Courts, respectively, that the validity of a statute or treaty or authority exercised under the United States was not even considered and, therefore, could not have been decided by either of such courts; nor was any clause of the Constitution or commission held under the United States referred to and, consequently, could not have been construed.

"A real and not a fictitious Federal question "is essential to the jurisdiction of this Court over "the judgments of State Courts. The bare aver- "ment of a Federal question is not in all cases "sufficient; there must be at least color of ground "for such averment."

Hamblin v. Western Land Co., 147 U. S., 530.

"Where a case is brought to this court on error "or appeal from a judgment of a State Court, "unless it appear in the record that a Federal "question was raised in the State Court before the "entry of final judgment in the case, this Court "is without jurisdiction." (Summerman v. Nebraska, 116 U. S., 54.) "It has also been frequently "decided that to give this Court jurisdiction of a "writ of error to a State Court, it must appear "affirmatively, not only that a Federal question "was presented for decision by the State Court, "but that its decision was necessary to the deter- "mination of the cause and that it was actually "decided adversely to the party claiming a right "under the Federal laws or Constitution, or that "the judgment as rendered could not have been "given without deciding it." (Eustis v. Bolles, 150 U. S., 361; California Powder Works v. Dam, 150 id., 389-393; Missouri P. R. Co. v. Fitzgerald, 160

id., 556-570.) "Nothing of the kind appears from "this record and the writ of error must, therefore, "be dismissed."

Fowler v. Lamson, 164 U. S., 252.

"To give the Court jurisdiction it must appear "affirmatively on the face of the record not only "that a Federal question was raised and presented "to the highest Court of the State for decision, "but that it was decided or that its decision was "necessary to the judgment or decree rendered in "the case."

Detroit City R. Co. v. Guthard, 114 U. S., 133.

It is not enough to give this court jurisdiction over the judgment of the State Court for the record to show that the Federal question was argued or presented to that Court for decision. It must appear that its decision was necessary to the determination of the cause and that it was actually decided, or that the judgment could not have been given without deciding it.

Mayor v. Miss., 21 Wall., 636.
Boling v. Lersner, 91 U. S., 594.
Brown v. Atwell, 92 U. S., 397.

None of the questions in the writ of error enumerated are suggested by the pleadings and no evidence in support of any such contention appears in the record of the trial of the case.

The return to the writ includes not only the record of the case in the Supreme Court of the State of New York for reviewal by the Court of Appeals of that State and the opinion of the Court last mentioned, together with the remittiur there-

from and the judgment of the Supreme Court based thereon, but, also, an affidavit of the attorney for plaintiffs in error which embodies certain correspondence by letters which appears to have passed between himself and the Regents of the University of the State of New York, one of the parties to the action. (Pages 181-189.)

It appears therefrom that on the 21st day of March, 1901, almost one year after the decision of the Appellate Division of the Supreme Court had been rendered, the following resolution was adopted by the University of the State of New York, at a legal meeting of the Regents, viz.:

"Voted that in the case of the Onondaga Nation "v. John Boyd Thacher, the attorney for the "plaintiff be requested to state to the Court of "Appeals that he was under a misapprehension "in supposing that he had received authority from "the Regents to make the University of the State "of New York a party to the suit." (Pages 170 and 182.)

The letters above mentioned relate to a matter of difference of opinion between the Regents of the University of the State of New York and the attorney for the plaintiffs in error on the subject referred to, but neither do any statements therein contained or in any of the other allegations of the affidavit of which they form a part constitute any portion of the record to be reviewed by this Court.

In that affidavit reference is made to a statute of the State of New York known as chapter 153 of the Laws of 1899, entitled "An act to collect and "preserve from loss or injury any and all wam-"pums which the Onondaga Nation of Indians, or

"its wampum keeper, or any of the Ho-De-No-Sau-"Nee, otherwise known as the Five Nations, or the "Six Nations, or the Iroquois is entitled to pos-"session." The second section of that act is as follows: "The provisions of this act shall not "apply to the subject matter of any litigation now "pending in any Court of this State." (See p. 184.)

The act referred to was introduced in the legislature at the request of plaintiffs' attorney and the second section above quoted was added at the suggestion of defendant.

This action has been pending since October 9, 1897 (see fols. 1a-3a), almost two years prior to the passage of the act above referred to, and consequently none of its provisions apply thereto. (This proposition is fully discussed in Point IX of this brief.)

No other statute, State or Federal, is made a part of the record in this suit; neither has the validity or constitutionality of that or any other statute been challenged by either party, or discussed by any of the Courts, and consequently there can be no serious contention that any question was raised as to the construction of any statute or commission held, or authority exercised, under the United States or its repugnancy to the Constitution of the United States, and, therefore, no decision against the title, right, privilege or immunity claimed under either is specially set up or claimed by either party thereunder.

"In order to give this Court jurisdiction of a "writ of error to review a judgment of the highest "Court of a State on the ground that it was de-"cided against the title, right, privilege or "immunity claimed under the Constitution, or a

"treaty or statute of the United States, such title, "right, privilege or immunity must have been "specially set up or claimed at the proper time and "in the proper way."

Morrison v. Watson, 154 U. S., 111.

But the learned counsel for the plaintiffs in error has also caused to be added to the record certain "excerpts from the briefs for the appel- "lants (plaintiffs in error) filed and used in the "Court of Appeals," certified by the clerk of that Court as "correct. transcripts therefrom." (See p. 209.) These excerpts consist of a statement by the plaintiffs' attorney of the grounds upon which the decisions of both branches of the Supreme Court of New York State were based and by which it affirmatively appears that none of the questions mentioned in the writ of error were decided, or even referred to, by the courts. (See pp. 196-203.)

The excerpts also include a portion of the argument of the attorney for plaintiffs in error in support of his contention that the several judgments above mentioned were erroneous and should be reversed.

Then follows a copy of what purports to be a treaty, designated as "The Washington Treaty," which first appeared in the litigation in the form of a supplemental brief filed with the Court of Appeals after the oral argument. (Pages 204-206.)

This alleged treaty was not introduced in evidence on the trial of the case, nor was it printed in any brief until after the case was submitted to the Court of last resort in the State of New York.

Preceding the copy of the treaty is the following declaration over the hyphenated words "As-Que-

Sent-Wah." (These words are understood to be the Indian appellation of the distinguished counsel who represents the plaintiffs in error), viz.:

"This belt was delivered by General Washington "himself to the chiefs and, at the same time, he "gave Red Jacket a large silver medal which I "have often seen in the hands of General Parker, "Red Jacket's grandson."

But even if this statement were a part of the evidence, the fact that the plaintiffs' attorney had seen a silver medal in the hands of Red Jacket's grandson would not be proof that General Washington had delivered that medal to Red Jacket, much less would it be evidence that General Washington had delivered the belt at the same time, or at any time.

But following the declaration of As-Que-Sent-Wah is the further statement for which no one stands sponsor, viz.: "It was delivered by Gen-"eral Washington himself upon ratification of the "treaty." (See page 204.)

That is simply an assumption without a scintilla of evidence to show the identity of the wampum in question with the belt which it is alleged was delivered by General Washington, even if it be conceded that any wampum was so delivered or used in connection with the ratification of that treaty.

The only testimony given by any witness examined during the trial of the suit in relation to the wampum in question was that of Messrs. Carrington and Sanborn.

The following questions were put to General Carrington by Mr. Paige and the following answers given thereto:

"Q. So that the belt represents the treaty which "General Washington made with the Six Nations? "A. It represents *the Indian idea* of that treaty.

"Q. It was made to commemorate that treaty? "A. Yes, sir. That is what I understand. I under- "stand it so. It struck me that there was a sensi- "ble historical factor that had interest." (Fols. 224-225.)

The following questions were asked of Rev. Mr. Sanborn by Mr. Paige and the following answers given:

"Q. Your belief in regard to the belt secondly "described was that it was made to *commemorate* "the treaty between the Six Nations and General "Washington? A. It was a commemorative belt. "*I never regarded that as an official belt of that* "*occasion.*" (Page 136, fol. 406.)

And, again, upon redirect examination of the witness last named, the following questions were asked and answers given:

"Q. When you say that this belt which I hold "in my hand was made to commemorate the treaty "between Washington and the Indians, you mean "that it was the treaty itself? A. That it was the "treaty itself? (In an inquiring manner.)

"Q. Yes. A. No, sir.

"Q. Do you mean anything more than that an "Indian made that to indicate his idea of a treaty "— a memorial in that way? A. That is the idea "of it I have.

"Q. Anything different from what an artist "would do in representing his idea or conception "of what some historical event might be? A. "Substantially that. It was probably, in those "early days, brought out and exhibited.

"Q. Was that the general impression prevailing "among the Indians in reference to this particular "belt? A. That is where I got my information. "I made some inquiries, as many as I could." (Page 141, fols. 422 and 423.)

If, therefore, the question in controversy here was to determine the origin and purpose of this particular wampum belt, the determination that it had no other relation to the treaty than a fanciful representation thereof according to the idea of the particular, individual Indian who made it, would be about as much as any Court would take the risk of holding. But even if it were the treaty itself and the only wampum belt involved in this suit, this Court would not thereby acquire jurisdiction by its writ of error herein. The question raised by the pleadings in this case and also by the evidence in support of the issues raised by the pleadings is one of title to personal property, not one concerning the construction or validity of a treaty or any authority exercised thereunder.

If the parchment or other written record of the treaty now assumed to be in the custody of the Department of the Secretary of State in Washington was sold by its custodian and the title thereby acquired were made the subject of judicial inquiry, the validity or construction of the treaty itself, or any clause thereof, would not be the question at issue.

By referring to the excerpts from plaintiffs' brief in the Court of Appeals which have been added to this record, as above stated, it will be observed that, according to the plaintiff's own interpretation of the record of the Courts of New York, the only questions raised by the pleadings as well as the only questions decided by the trial

and appellate branches of the Supreme Court of New York were those relating to the ownership of the wampum. (Pages 196 and 197.)

"The action was originally brought by the On-
"ondaga Nation and Te-Hes-Ha, on behalf of all
"the Ho-De-No-Sau-Nee as well as themselves, and
"the defendant's answer alleged first, that he was
"the true and lawful owner of each and every of
"said belts of wampum; secondly, denied that they
"were the property of the Ho-De-No-Sau-Nee, and
"thirdly, alleged that the plaintiffs had no capa-
"city to sue." (Page 196, fols. 59, 72 and 76.)

"The Trial Court dismissed the complaint upon
"the grounds: first, that the action could not be
"maintained without a demand, and second, that
"though the wampums had once been the property
"of the Five Nations, they had come to be the
"individual property of Thomas Webster, an On-
"ondaga Indian, who had sold them to General
"Carrington, who had sold them to Dr. Crane, who
"had sold them to the defendant." (Fols. 473-479, see page 107.)

The Appellate Division affirmed the judgment, holding that "the defendant had good title to the "belts, the reasoning of the court being — there "is proof of Webster's ownership of the belts in the "fact of his possession thereof independent of any "proof of his having been a wampum keeper for "years prior to his transfer thereof in 1891." (Fol. 533, page 197.)

To this might be added the following extract from the opinion of the Appellate Division:

"Where the controversy is between other parties
"who claim to have purchased the belts and paid
"the money therefor, then the question of senti-

"ment is gone *and it is a mere question of title to* "*be determined upon the evidence* and *we* are "unable to see any reason why we should reverse "the trial Court in its finding that Webster had "good title to the belts when he made his transfer "in 1891, or why we should not at least conclude "ourselves that the University of the State of "New York has failed satisfactorily to establish "any better title under the transfer of 1898, than "the defendant holds under his chain of title which "began in the Webster transfer of 1891." (Fols. 535 and 536.)

As was said in the following cases decided by this Court, no jurisdiction is acquired to review by writ of error the decision of a State Court, where the issue is a question of title to property even if that title is derived under a grant from or a treaty entered into by the United States.

"The record does not show that it draws in "question any treaty, statute or authority exer- "cised under the United States, or the validity of "any State statute for repugnancy to the Con- "stitution of the United States, or the construction "of any clause of the Constitution, or of a treaty "or statute or commission held under the United "States. It is a mere question of boundary be- "tween two neighbors, both admitted to have valid "grants from the United States."

Moreland v. Page, 20 How., 522.

"In an action of ejectment between two citizens "of Maryland for a tract of land in Maryland, if "the defendant set up an outstanding title in a "British subject which he contends is protected by "the treaty and therefore the title is out of the "plaintiff; and the highest State Court in Mary-

"land decides against the title thus set up, it is "not a case in which a writ of error can lie to the "Supreme Court of the United States. *It is not "'a case arising under a treaty.'*"

Owings v. Norwood's Lessee, 5 Cranch, 344.

"The treaty by which Louisiana was ceded to "the United States recognizing complete grants "issued anterior to the cession and a decision of "a State Court against the validity of a title set "up under such a grant would be subject to re- "visal by this Court under the 25th section of "the judiciary act. But if the State Court only "applies the local laws of the State to the construc- "tion of the grant, it is not a decision against its "validity and this Court has no jurisdiction."

McDonough v. Millaudon, 3 How., 693.

The treaty referred to as the Washington Treaty simply recognizes the rights of the Oneida, Onondaga, Cayuga and Seneca tribes in the reservations which they had acquired by their respective treaties with the State of New York, and the United States therein agreed never to disturb the four tribes above mentioned and who formerly constituted part of the so-called Six Nations, provided that they and each of them "engaged that they "would not claim any other lands." In consideration thereof the United States made them an annual allowance of money and provisions, to be distributed by an agent of the government.

Thus, even if the construction of the treaty was the foundation of the suit, it could hardly be claimed that the right to sue in the Courts of the

State of New York was thereby conferred on the tribes therein mentioned. The treaty itself does not refer in any way to the property which constitutes the subject matter of this controversy and does not extend or limit any of the rights or remedies of the Indian tribes therein mentioned, or any individual member thereof in any other matter. There is no allusion therein to the Ho-De-No-Sau-Nee, in whose behalf this suit purports to have been commenced. (See Complaint, fols. 1-3.)

The Trial Court in this case held that the individual Indians had the right to sue, but notwithstanding such determination it also held that they had no cause of action in this case.

The Appellate Division also held that they had no cause of action herein without regard to the question of their right to sue.

The Court of Appeals held simply "that neither "the Onondaga Nation, nor the individual Indians "named as plaintiffs had legal capacity to bring "and maintain the action." That holding does not necessarily imply that these parties had no right to maintain any other action, nor that they could not obtain the necessary permission by legislative enactment to sue in the Courts of the State, or from Congress to sue in the Federal Courts, which right certain Indian tribes and individual Indians have already acquired. Courts are provided for the determination of controversies in which Indians and Indian tribes become involved and the protection of their rights when necessary, but whether or not they have the right to sue in the Courts of the State of New York, except in the special cases authorized by the Legislature, has not been specially set up in this action so far as indicated by the record in the case, as a right,

privilege or immunity or claim by either party under the Constitution, or any treaty, statute, commission or other authority of the United States.

Cases are cited by counsel for plaintiffs in error which hold that Indian tribes are by the Constitution of the United States placed for certain purposes within the control of the laws of Congress, and wherever such authority is exercised no State, nor any act of its Legislature can withdraw them from the influence of an act which Congress has the constitutional right to pass concerning them.

It has also been held in such a case that they can not be subjected to the process of the Courts of the State. But there has been no attempt in the case at bar to interfere with the operation of any right conferred by act of Congress or any treaty made in pursuance of such law or the Constitution of the United States.

The Courts of New York State have not assumed any jurisdiction over the plaintiffs in error against their wish, but on the contrary, have decided that they had no right to maintain this action therein. No Federal statute or treaty has been violated, and none has been shown to have any application to the subject of the litigation in the case at bar.

"The United States and Congress may pass such "laws as it sees fit prescribing the rules governing "the intercourse of the Indians with one another "and with citizens of the United States, *and also* "*the courts in which all controversies to which an* "*Indian may be a party shall be submitted.*" (United States v. Rogers, 4 How., 567; United States v. Kagama, 118 U. S., 375; Gon-shay-ee, Petitioner, 130 U. S., 343; Cherokee Nation v. Kansas Railway Company, *supra;* Roff v. Burney, 168 U. S., 218.) "But the existence of the right in

"Congress to regulate the manner in which the "local powers of the Cherokee Nation shall be ex- "ercised *does not render such local powers Federal* "*powers arising from and created by the Consti-* "*tution of the United States.*" * * * "The "question whether a statute of the Cherokee Na- "tion which was not repugnant to the Constitution "of the United States or in conflict with any treaty "or law of the United States had been repealed "by another statute of that nation, and the deter- "mination of what was the existing law of the "Cherokee Nation as to the construction of the "grand jury, were solely matters within the juris- "diction of the courts of that nation, and the de- "cision of such a question in itself necessarily in- "volves no infraction of the Constitution of the "United States. Such has been the decision of "this court with reference to similar contentions "arising upon an indictment and a conviction in "a State Court." (In re Duncan, 139 U. S., 449.) "The ruling in that case is equally applicable to "the contentions in this particular arising from "the record before us." (Jones v. Meehan, 175 U. S., 29.

The lack of capacity of the Indian plaintiffs to maintain this action is discussed at considerable length under Points III, IV and V of the brief. But whether or not they have any such right is not a question for review in this Court. Whatever may have been their character prior to March 3, 1871, on that date Congress by law declared that "No Indian Nation or Tribe * * * should be "recognized as an independent Nation, Tribe or "power with whom the United States may contract "by treaty, etc." This was more than twenty-eight years prior to the commencement of this action. They

never were recognized by the United States as "Nations" except nominally. As was said in the case of United States v. Kagama (118 U. S., 375, 385): "They were, and always have been, re- "garded as having a semi-independent position "when they preserved their tribal relations; not "as States, not as Nations, not as possessed of the "full attributes of sovereignty, but as a separate "people, with the power of regulating their inter- "nal and social relations, and thus far not brought "under the laws of the Union or of the State "within whose limits they resided.

"Perhaps the best statement of their position is "found in the two opinions of this Court by Chief "Justice Marshall in the case of the *Cherokee Nation* v. *Georgia* (5 Pet., 1 [30 U. S., bk. 8, L. ed., 25]), and in the case of *Worcester* v. *Georgia* (6 Pet., 536 [31 U. S., bk. 8, L. ed.,492.]) "These opin- "ions are exhaustive; and in the separate opinion of "Mr. Justice Baldwin in the former is a very valu- "able *resume* of the treaties and statutes concern- "ing the Indian Tribes previous to and during the "confederation.

"In the first of the above cases it was held that "these Tribes were neither States nor Nations, had "only some of the attributes of sovereignty, *and* "*could not be so far recognized in that capacity* "*as to sustain a suit in the Supreme Court of the* "*United States.* In the second case it was said "that they were not subject to the jurisdiction as- "serted over them by the State of Georgia, which, "because they were within its limits, where they "had been for ages, had attempted to extend her "laws and the jurisdiction of her courts over "them.

"In the opinions in these cases they are spoken "of as 'wards of the Nation,' 'pupils,' as local de- "pendent communities. In this spirit the United "States has conducted its relations to them from "its organization to this time. But, after an expe- "rience of a hundred years of the treaty-making "system of government, Congress has determined "upon a new departure — to govern them by acts "of Congress. This is seen in the Act of March "3, 1871, embodied in section 2079 of the Revised "Statutes:

"'No Indian Nation or Tribe, within the terri- "'tory of the United States, shall be acknowl- "'edged, or recognized as an independent Nation, "'Tribe, or power, with whom the United States "'may contract by treaty; but no obligation of "'any treaty lawfully made and ratified with any "'such Indian Nation or Tribe prior to March 3, "'1871, shall be hereby invalidated or impaired.'"

United States v. Kagama, 118 U. S., 375-385.

But it will be observed by reference to the record that there were other questions determined in this case, which disposed of the issues involved, independent of the legal capacity of the Indian plaintiffs to sue or their right to maintain this particular action even though the latter might be regarded as Federal questions.

It was decided by the Supreme Court of New York that defendant had title to the property described in the complaint, and that there was no satisfactory proof of any ownership by the individual Indian plaintiffs or the Indian tribe named in the complaint. (Fols. 533-536.) These questions and others, including the Statute of Limita-

tions, the failure to make a demand as a condition precedent to the commencement of the action, the lack of authority of the parties named to represent the Indian tribes alleged to be interested were argued and to a considerable extent were embodied in the opinions of the Courts in the reasoning which led to the determination of the case. (See Points II, IV, V, VI, VII, VIII.)

"Where the State Court based its judgment not "on a law raising a Federal question, but on an "independent ground this Court will not take "jurisdiction of the case even though it might "think the position of the State Court an unsound "one."

De Saussure v. Gaillard, 127 U. S., 216.

"Alleged errors of the State Court which involve "questions either than of fact or of State and not "of Federal law, are not reviewable in the United "States Supreme Court on a writ of error."

Quimby v. Boyd, 128 U. S., 488.

"Where the record shows that the State Court "must, in rendering judgment, have passed upon "several questions, only one of which is ground "of jurisdiction in this Court, and it does not ap- "pear that the decision was necessarily on that "question, this Court has no jurisdiction. Neither "the opinion of the State Court nor the argument "of counsel can be resorted to for the purpose of "showing that the question of Federal cognizance "was decided by the State Court."

Gibson v. Chouteau, 8 Wall., 314.

"A decision by a State Court that an Indian na- "tion bringing an action under a State statute is

"subject to the bar of the Statute of Limitations,
"under a provision of the statute that such actions
"may be brought in the same manner and in the
"same time as if brought by citizens of the State in
"relation to private individual matters, is not the
"decision of a federal question subject to review by
"the Supreme Court of the United States.

"Where the decision of the State Court was
"rested, in addition to other grounds, upon a dis-
"tinct and independent ground not involving any
"federal question, and sufficient in itself to main-
"tain the judgment, the writ of error falls within
"the well-settled rule on that subject, and cannot
"be maintained."

Seneca Nation v. Christy, 162 U. S., 284.

The case last cited was an action in ejectment relating to certain of the lands referred to in the so-called "Washington Treaty." The Seneca Nation of Indians was especially authorized by an act of the Legislature to maintain any action or suit in any court of law or equity in the State necessary to protect their rights in said lands. The answer consisted of a general denial; the defendant also pleaded the Statute of Limitations, and that the plaintiff had not the legal right, title, capacity or authority to maintain the action as in the case at bar. The Court of Appeals held that a grant through which defendant derived title was not in contravention of the provisions of the Federal Constitution or of the Indian Intercourse Act of 1802 and vested in the purchaser a good title free from any claim of the Seneca Nation. It held also that the Statute of Limitations was a bar to the action.

Two days prior to the passage of the enabling act under which the suit was brought, Chancellor Wal-

worth had decided that the Indians could not maintain an action at law in the name of their tribes to recover damages sustained by trespasses on their reservations, or for the use of the lands, as they had no corporate name and no provision was made by law for bringing an ejectment suit. (See opinion in case cited.)

The case in which the decision last referred to was rendered is that entitled Strong v. Waterman (11 Paige, 607), and the case cited in the following extract from the opinion of Judge Cullen (now of the Court of Appeals of New York) in the case of The Montauk Tribe of Indians v. Long Island Railroad Company (28 App. Div., 470), discussed in Point III of this brief. Judge Cullen says:

"It is not worth while to enter upon any discus-
"sion of the status of the Indian tribes within this
"State, as we think that on the question now before
"us *we are concluded by authority.* In Strong v.
"Waterman (11 Paige, 607) it was held that while
"the Indians had the undoubted right to the bene-
"ficial use and occupancy of their lands, no pro-
"vision had been made by law for bringing
"ejectment to recover possession of them; that *as a*
"*body or tribe, the Indians have no corporate name*
"*by which they can institute such a suit.* This
"doctrine was again asserted in Seneca Nation v.
"Christie (126 N. Y., 122), where it was held that
"the right of that nation to sue depended solely
"on the enabling statute of 1845 (chap. 150).
"This ruling cannot be considered *obiter*, as a writ
"of error was dismissed by the Supreme Court of
"the United States on the ground that the decision
"of the Court of Appeals on the effect and con-
"struction of the enabling act necessarily deter-
"mined the controversy, and that, therefore, the
"other grounds on which the decision of that court

"proceeded were immaterial. (Seneca Nation v. "Christie, 162 U. S., 283.) The statute of 1845 in "express terms is limited to the Seneca Nation. "*I can find no general statute passed since the de-* "*cision of Strong v. Waterman which enables* "*Indian tribes or nations to sue as such.* Section "11 of the Indian Law (chapter 679 of the Laws of "1892) cannot be construed as effective for the "purpose."

II.

The defendant is now and has been since the 24th day of March, 1893, the absolute owner of the property which constitutes the subject-matter of this action and has been in the possession of it during all that time.

At the time of the purchase by him, and, so far as is disclosed by the testimony, when the defendant first became aware of the existence of the wampum belts, which now constitute the subject-matter of this controversy, he was acting as one of the three commissioners appointed by the President of the United States, and afterwards by the Governor and the Legislature of the State of New York, to represent that State at the Columbian Exposition, to be held in the city of Chicago during the year 1894. (Chap. 236, Laws 1892.)

The late Senator Donald MacNaughton was one of the commissioners appointed by the Governor, pursuant to the statute, to represent one of the judicial districts of the State, and was associated with Mr. Thacher in the preparation and management of the exhibit of the State at that exposition.

Rev. John W. Sanborn, one of the witnesses who testified on the trial of this action, had been appointed director of the Indian exhibit of the State of New York at Chicago and had ascertained that the belts of wampum, now described in the complaint, were owned by Rev. Dr. Oliver Crane, a Presbyterian clergyman; that they had been on exhibition in the Boston Museum, and also in Yale University. Having knowledge of these facts, and, believing that they would be regarded as an attractive feature of the exhibit under his charge, he suggested to Messrs. Thacher and MacNaughton the propriety of purchasing the wampums out of the moneys appropriated by the State and make the same a part of the New York exhibit.

Defendant and Mr. MacNaughton concluded, however, that the moneys so appropriated were intended to be used for defraying the expense of exhibiting such articles as were owned by the State or presented to it for that purpose, but were not applicable to and could not be devoted to the purpose of purchasing articles to be placed on exhibition. They, therefore, declined to accede to the request of Mr. Sanborn. The latter, however, was quite persistent in his efforts to secure the wampum belts for the Indian exhibit and subsequently appealed to the defendant to aid him in that regard. The defendant, after repeated solicitation, finally acceded to Mr. Sanborn's request and agreed to purchase the belts on his own account, at the same time delivering to Mr. Sanborn his check for the sum of five hundred dollars ($500), drawn on defendant's own personal bank account.

The wampums were thereafter placed on exhibition in Chicago, and in a position to be seen by as many people as ever assembled in any one particular locality. (Fols. 20 and 352.)

These are substantially the allegations of the complaint and the admissions of the answer, as well as the testimony of Mr. Sanborn taken on the trial, in regard to the manner and circumstances under which defendant became possessed of this property. (Complaint, fols. 7-10; testimony, fols. 347-350, 301, 394.)

It is conceded that defendant paid as consideration for the purchase almost twice as much as had been paid less than a year prior thereto by Dr. Crane to General Carrington, and almost four times the amount paid by General Carrington to Thomas Webster for the identical articles. He has never hesitated to acknowledge possession of the property. It was placed in Chicago, labeled as his property, where it could be seen by everybody. It is referred to in the report of the commission as being "*Owned by Honorable John Boyd Thacher*, of Albany, N. Y." (Fols. 130-135.)

It is acknowledged by the secretary of the University of the State of New York that Mr. Thacher was not the "agent of the State" in the transaction, but that "it was purely a personal matter." The good faith and honorable character of Mr. Thacher and the several persons concerned in the sale of the property to him and through whom his title was derived, namely, Rev. Mr. Sanborn, Rev. Dr. Crane and Gen. Carrington, are unassailable.

The receipt given by Dr. Crane for the purchase was through an erroneous impression of the person who formulated it, made in such form as to imply that the State of New York had purchased the wampums, yet, when that person, who is none other than Mr. Sanborn, explained the circumstances on the trial, it appeared conclusively that Mr. Thacher edge of the existence of such receipt, Mr. Sanborn

knows, had not at the date of the trial any knowledge of the existence of such receipt. Mr. Sanborn having prepared it without consultation with Mr. Thacher. (Fols. 365 and 421.)

All the evidence in the case, as well as the pleadings, disclose the fact that the purchase, so far as Mr. Thacher is concerned, was an honest one, made in an open manner, without any desire on his part to acquire possession of the wampums, except so far as he was actuated by purely philanthropic and patriotic motives. As stated in the opinion of Justice Hiscock, "there is nothing to impugn his good "faith. On the contrary, he was induced by others, "as a matter of public spirit, to make this pur- "chase with his own funds to help the Indian ex- "hibit at Chicago, there being no public moneys "available for the purpose." (Fol. 477.)

The original purchase by General Carrington was made upon the supposition that the United States Government would take the wampums from him and reimburse him for the expenses which he had incurred. In the receipt which he took from Thomas Webster the name of the purchaser was left blank, for the reason that he expected to receive notification from Washington that the purchase would be recognized as an official purchase. The amount of his disbursements for that purpose was disallowed by the government. It would not refund any portion of the amount paid by him, and he was, therefore, obliged to retain the wampums. (Deposition of General Carrington, fol. 288.) The sale was made to Dr. Crane in the same way at the solicitation of General Carrington, who needed the money to invest in a book which he desired to have published at that time. (Fol. 237.)

Thus the evidence shows that none of the purchasers were solicitous in regard to the purchase, but that in each case, on account of purely philanthropic motives and with a desire for the preservation of these curiosities, the purchasers were induced to make the purchase and invest their own private funds.

The title of the defendant to the property in question was assailed solely on the ground that at the time of its purchase by General Carrington it was in the custody of Thomas Webster in his alleged official capacity as "wampum-keeper."

Whatever may have been the powers conferred or duties imposed upon such an official position while the Iroquois Confederacy existed, there is no evidence in the case to sustain the claim that any such office was recognized after the dissolution of the league, which occurred more than a century ago.

The undisputed evidence disclosed the fact that the use of the wampum belts for the purposes for which they had been originally made, as contended by the plaintiffs, had become obsolete since the date above referred to. Thereafter the wampum had become nothing more than a curiosity and a relic of a time, condition and federation which had ceased to exist, and, as a result, the position of "keeper of "the wampums" had, so far as its original significance was concerned, become useless and was abrogated. (See finding of fact VIII, fol. 92.)

It was also held by the trial court in a separate finding of fact, fully supported by the testimony of witnesses examined on the trial, which finding was thereafter affirmed by the Appellate Division, that "on the 10th day of February, 1891, and for "many years prior thereto, one Thomas Webster, "an Onondaga Indian, had become the owner and

"was in possession of several of the wampum belts "above referred to, including those enumerated in "the complaint herein. That said Webster was not "then, and never was, an incumbent of the office "or position of wampum-keeper of the Onondaga "Nation or of any of the individual tribes compos- "ing the Iroquois Confederacy, and that there was "at that time no such official position known or "recognized among the Indians composing any or "either of said tribes or confederacy. That the "individual and personal ownership of said "Thomas Webster in said wampum belts was recog- "nized by the said several tribes which formerly "constituted said league and by the individual "members thereof, and that said tribes and Indians "had long prior to that time ceased to treat or re- "gard their wampum belts as the property of either "the Onondaga Nation of the Iroquois League." (See finding of fact VIII, fols. 93 and 94.)

A part of the evidence on which the foregoing findings were based includes the testimony of Daniel La Forte, who is the same person designated in the title of the action as one of the plaintiffs by the name Te-hes-ha. (Fol. 197.) His testimony was also corroborated by that of the Rev. John W. Sanborn, who, during the year 1887, was delegated as a missionary among the Indians of the Seneca Nation and served as such for a period of three years thereafter. During that time and subsequent thereto he became conversant with the language of the Indians and translated books for their use. He became an adopted member of the Seneca tribe and had been frequently appointed by them an arbitrator to settle disputes and controversies arising among them. On account of these relations and his familiarity with the customs and habits of the

Iroquois Indians he was appointed director of the United States Indian exhibit at the World's Fair. (Fols. 209, 342-347.)

Another witness sworn in behalf of the defendant was General Carrington, who had spent almost his entire lifetime in the study of the Indians of North America and who was selected by the United States government to make the investigation necessary for the preparation of the article on that subject for the eleventh federal census.

This history of the Six Nations, which appears in the census under the title of "The Indians of the "State of New York," was also also written by him. (See Carrington's deposition, pages 89-114.)

The plaintiff, Te-hes-ha, otherwise known as Daniel La Forte, stated that the Indians "do not "use the wampums any more. *They are only a "relic now. The old customs are fading away, and, "as we do not use the wampums as of old, we do "not have as much interest in them.*" (Fol. 376.) This statement was also repeated to Mr. Sanborn, who said that La Forte told him that they "*were "relics now, sort of heirlooms, like old spinning-"wheels, old almanacs, etc.*" (Fols. 360-364.) And, again, when Mr. Sanborn asked Webster to read them, that is, to explain the belts to him, and asked him of they were authoritative, Webster replied: "*No; our people do not care anything "about them any more; we do not use them.*" (Fol. 363.) This same statement, it appears, was made to Mr. Sanborn by other Indians of the present generation, whose names he enumerated in reply to a question from plaintiff's attorney. (Fol. 364.) When the latter attempted, upon cross-examination, to have Mr. Sanborn admit that the wampums were at one time the property of the Five

Nations, or to state his belief in regard to the same, the witness simply said that he believed they were made to commemorate certain events which occurred in the history of the Five Nations; that the Five Nations did not make them, but some Indians among these Nations either made them or the French helped them to make them. (Fols. 403-406.) And, again, on his redirect-examination, in his explanation of the use of the word "commemorate" in connection with the belt known as the "Washington Belt," he stated positively that the belt was not the treaty itself, and was not "an "official belt of that occasion," but simply a memorial made by some Indian to indicate his idea of the treaty, as the conception that an artist might commit to canvas of a historical event of that character, and that, he stated, was the general impression prevailing among the Indians in reference to this particular belt, as well as others. (Fols. 422-424.)

La Forte made substantially the same statement to General Carrington that he did to Mr. Sanborn, and, as he has stated over his own signature in the case, namely, "no one has any interest in them "now, except himself (meaning Webster), and he "keeps them as relics of old times." (Fol. 219.) In reply to a question of the plaintiffs's attorney, General Carrington (the author of the "Census "Bulletin" referred to so extensively by the attorney for plaintiff in error), stated that the Washington Belt simply represented "*the Indian idea of "the treaty.*" (Fol. 224.) And again in one of the extracts from the bulletin he says: "Notwith-"standing the claims made that the wampum can "be read as a governing code of law, it is evident

"that they are simply reminders of preserved tra-
"ditions without any literal details whatever. As
"curious relics they are valuable."

There is no evidence whatever in the record upon which the judgments of the several courts of the State of New York are founded that either of the wampum belts in controversy is the so-called "Washington treaty" or any other treaty, or that it was delivered to anybody by President Washington.

A supplemental brief was filed by plaintiff with the Court of Appeals after the argument of the case, which consisted of a copy of the document said to be the treaty referred to, and is now made a part of the record on the certificate of the clerk of the Court of Appeals, that it is an "excerpt" from a brief filed in behalf of plaintiff in the Court of Appeals. (Pages 204, 205 and 209.)

Another excerpt introduced in the record in the same manner is an assertion over the signature "As-que-sent-wah" (which is understood to be the Indian cognomen of the distinguished counsel for the plaintiff in this case) that the belt was delivered to the chiefs at the same time he gave Red Jacket a silver medal, which medal As-que-sent-wah saw in the hands of Red Jacket's grandson. (Page 204.) That certainly is no evidence to support the alleged fact that the belt is the treaty or in any way represents it, and the argument based upon the assumption that this string of beads constitutes a duplicate of the treaty, has no foundation in fact.

The testimony of General Carrington fully corroborates that of Messrs. Sanborn and La Forte. He made a special investigation to ascertain the whereabouts of any wampum belts that might be

still in existence and also what knowledge, if any, the Indians had concerning them or how they were regarded by them. He was occupied ten months continuously in this work, and during its progress visited and located every family of the various tribes constituting the confederacy, and made a map of their several reservations showing thereon the location of the house and habitation of each family. He gives an account, in detail, of his various inquiries, made particularly among the old men and women of the various tribes concerning the subject. (Fols. 209-219.)

Several of the Indians told him that a Mr. Bryant, of Buffalo, could give him better information as to old relics than any white man, and that Thomas Webster, of Onondaga, who had spent a good deal of time in collecting old relics, wampums particularly, could, perhaps, aid him. He visited Mr. Bryant and found that he had purchased a wampum for twenty-five dollars from a chief living in Canada, and also, in the course of his investigation, found that it was a customary thing to dispose of wampums, but that they had become so scarce recently that those who had them did not desire to part with them. The wampums in Webster's possession were invariably referred to by the Indians as "Webster's Collection," which he had had in his possession for a good many years. (Fols. 212, 218, 230.)

General Carrington, after visiting the Senecas, Tuscaroras, Cayugas and "St. Regis" or Mohawk Indians, finally arrived at the Onondaga Reservation and spent several weeks at the house of Daniel La Forte, with whom negotiations were conducted for the sale of the wampum described in the complaint. He testified that there was no such official

position as a "wampum-keeper;" that Mr. Webster called himself "wampum-keeper" because he was the only man who had the wampums and kept them, and so cherishing the tradition as wampum keeper; and he (Carrington) *treated him in his report as wampum-keeper,* BUT DID NOT KNOW HIM OFFICIALLY AS SUCH. (Fol. 230.) He also testified that Daniel La Forte treated Webster as tradition treats a person who collects postage stamps and such things, but that, in all his inquiries and investigation made among the Indians having the preservation of these wampums in mind, he did not find one who claimed that anyone but Webster had control of the wampums then in his possession. (Fol. 230.) No one ever disputed his ownership. That Webster had informed him that he had one or two of them for quite a number of years, as long ago as his father's time, and that one or two he had brought from Canada. (Carrington's deposition, fol. 234.)

The general tenor of the entire testimony of both witnesses is to the effect that Webster was simply a "relic-gatherer," and that there were other relic-gatherers of the same kind, but only a few in number among these Indians, both in the United States and Canada, who have been collecting the wampums wherever they could find them, by purchase or otherwise, and have been, to a certain extent, speculating in them. However, with the exception of an Indian like La Forte, who seemed to be somewhat impressed with Webster's pretense that he could discover hidden meanings in the wampum, they had no significance among the members of the tribe generally.

As stated in Clark's History, introduced by the plaintiffs, they, as well as the bag which contained

them, were relics and might be regarded as a great curiosity. Under these circumstances it would be as unjust to insist that they were still the property, if they ever were, of the league, as it would be to insist that the autographs or letters in the handwriting of famous men were the property of the nation with which they were connected, simply because of some official relation which they had to such nation during their lifetime.

III.

None of the plaintiffs other than the University of the State of New York has the legal capacity to sue, or the legal capacity to bring and maintain this action in the courts of this State.

The original parties plaintiff named in the summons and complaint are "the Onondaga Nation "and Te-hes-ha, an Onondaga Indian, on his own "behalf and also on behalf of all of the Ho-de-no-"sau-nee." (Fols. 1a, 3a and fols. 1-2.)

Upon application of the plaintiffs' attorney on the trial of the action the University of the State of New York and the several individuals whose Indian appellations now appear in the title of the action, were made parties plaintiff. (Fols. 79-83.)

It appears, both from the order and the title of the action, as amended, that these additional plaintiffs are members of certain Indian tribes living on reservations maintained by the State of New York.

The right of the so-called Onondaga Nation or any of its individual members, or the members of either of the other Indian tribes referred to in the

amended title to bring or maintain this action, is challenged by the defendant. The issue is raised by the original answer, so far as it affects the original plaintiffs. By the order of the Special Term, as well as the order of the Appellate Division, authorizing the amendment of the answer, the same issue is raised in regard to the additional plaintiffs.

Paragraph 12 of the original answer reads as follows:

"And for a further and separate answer and de-
" fense to the allegations of the complaint herein
" the defendant alleges that neither the Onondaga
" Nation, so called, nor Te-hes-ha, an Onondaga In-
" dian, on his own behalf and also on behalf of the
" Ho-de-no-sau-nee, the alleged parties plaintiff in
" this action, *had or has the legal capacity to sue,*
" *or the legal capacity to bring or maintain this*
" *action.*" (Fols. 76-77.)

The order of the Appellate Division, authorizing the amendment of the answer so as to apply to the additional plaintiffs without further service, provides that the answer be deemed amended by inserting therein an allegation "*that neither of said* " *plaintiffs had or has the legal capacity to sue, or* " *the legal capacity to bring and maintain this* " *action,*" etc. (Fol. 514.)

The right of these alleged plaintiffs to maintain this action is thus made one of the material issues in the case.

Some time prior to the trial of this action it was expressly held in the case of The Montauk Tribe of Indians v. The Long Island Railroad Company (28 App. Div., 470; 51 N. Y. Supp., 142) that "a tribe " of Indians has no corporate name by which it " can institute a suit in ejectment in the courts of " the State of New York."

It was held that such a tribe is not a natural person or corporation, nor an incorporated association permitted by law to maintain an action in the name of any of its officers, or authorized by law to maintain an action as a bribe.

In expressing the unanimous opinion of the court, Mr. Justice Cullen makes use of the following language:

"One of the grounds of the demurrer is that the "plaintiff has no capacity to sue, and this is the "ground on which the decision of the Special "Term proceeded. It is not worth while to enter "upon any discussion of the status of the Indian "tribes within this State, as we think that on the "question now before us *we are concluded by au-* "*thority.* In Strong v. Waterman (11 Paige, "607) it was held that while the Indians had the "undoubted right to the beneficial use and occu- "pancy of their lands, no provision had been made "by law for bringing ejectment to recover posses- "sion of them; that *as a body or tribe, the Indians* "*have no corporate name by which they can insti-* "*tute such a suit.* This doctrine was again as- "serted in Seneca Nation v. Christie (126 N. Y., "122), where it was held that the right of that "nation to sue depended solely on the enabling "statute of 1845. (Chap. 150. This ruling cannot "be considered *obiter*, as a writ of error was dis- "missed by the Supreme Court of the United "States on the ground that the decision of the "Court of Appeals on the effect and construction "of the enabling act necessarily determined the "controversy, and that, therefore, the other "grounds on which the decision of that court pro- "ceeded were immaterial. (Seneca Nation v. "Christie, 162 U. S., 283.) The statute of 1845 in

"express terms is limited to the Seneca Nation. "*I can find no general statute passed since the de-* "*cision of Strong v. Waterman which enables* "*Indian tribes or nations to sue as such.* Section "11 of the Indian Law (chapter 679 of the Laws of "1892) cannot be construed as effective for the "purpose.'"

Mr. Jusice Hiscock, who presided at the trial of this action, following the decision of the court in the case last cited and also the authorities upon which it was based, held that such authorities constituted a direct adjudication of the question, but further commented upon the proposition as follows:

"It is not desirable to review at length all of "the reasons and arguments which have been, or "may be, advanced in favor of or against the right "of a tribe or nation of Indians, as the Onondaga "Nation, to bring suit. The weight of authority in "this State seems to decisively settle the question "in the negative."

"In the first place, the statutes of the State, as "collected and embodied in the Indian Law of 1892 "(chap. 679), both by general provisions and by "those specially relating to the Onondaga Indians, "indicate an intent upon the part of the State to "treat the Indians as wards, and, except when "otherwise specially provided, to trust the protec-"tion of their rights, as tribes or nations, to its "agents, rather than to proceedings by themselves. "Where it was deemed wise to have tribal action "in relation to tribal rights, as in the case of tres-"passes upon tribal lands and in the case of cer-"tain rights in 'oil spring reservations,' express "authority is given for the prosecution of suits in "the name of the 'nation' interested. (Indian

"Laws, secs. 11, 55.) There was, of course, no "necessity for this, if the general power was "possessed by the different tribes or nations of "Indians, as such, to bring suits." (Fols. 484-486; 29 Misc. Rep., 432.

From the foregoing it distinctly appears that the trial court in this case fully considered the effect of the "Indian Law" in arriving at its conclusion, and, presumably, the learned justice who wrote the opinion of the Appellate Division in the case cited was familiar with such provisions of the law as might be regarded applicable and of importance in reaching a determination of the questions involved.

Certainly, all the authorities heretofore cited on the brief of the learned counsel for the plaintiffs in this action are referred to and discussed in the opinion of Mr. Justice Cullen, and, undoubtedly, were given due weight. Consequently there is no force in the suggestion now made that section 5 of the Indian Law "may possibly not have been brought "to the attention of the court." In fact, it appears from the record in this case that at the time of the trial plaintiff's attorney did not seriously dispute this proposition that the Onondaga Nation had no authority to sue and evidently caused the individual Indians to be made parties plaintiff for the very purpose of avoiding the consequence of having no client to maintain the action, as would have been the inevitable result if it were continued in the name of the original parties.

The brief submitted on appeal in the Court of Appeals indicates the doubt which then existed in the mind of the learned counsel on this subject, where he uses the following language: "We had "meant in the existing state of adjudged cases "* * * to go on with whichever plaintiff the

"court finally held entitled to sue and pay the bill "of costs for the others. But after the case had "been argued in the Appellate Division, but before "it was decided, the court decided the case of "Johnson v. Long Island Railroad Company (162 "N. Y., 462.)" (See appellant's brief, page 90.)

The clause last quoted, as well as certain paragraphs of plaintiffs' brief, would seem to indicate that the plaintiffs' counsel had substantially abandoned all contention theretofore made concerning the alleged right of these plaintiffs to sue to recover the possession of the property described in the complaint. It is, however, intimated that "this "bill is properly filed by the individual plaintiffs "to enjoin the defendant from disposing of, de-"stroying, etc. * * * the wampums in question." Or, to use the language of the subsequent paragraph: "The individual plaintiffs can file "this bill to protect the records from destruction, "although they have not capacity to sue for de-"livery of the possession of them."

Assuming such a technical construction to he well founded, inasmuch as the substantial object of the action is the recovery of the possession of the property, the injunction alone would prove to be but the shadow of the remedy sought.

It would seem, however, that the Court of Appeals in the case of Johnson v. Long Island Railroad Company above cited has completely disposed of any such pretence of a claim as is now suggested as a final effort to uphold this action.

The following extract from the language of Mr. Justice Bartlett, who wrote the opinion of the court in the case cited, shows that no foundation exists for any such pretended claim:

"A decision holding that this action could be "maintained, either by the tribe or an individual "member thereof, on behalf of himself and all "others who should come in and contribute, would "be contrary to the policy and practice which have "been long established in our treatment of the "Indian tribes. *They are regarded as the wards of "the State, and, generally speaking, possessed of "only such rights to appear and litigate in courts "of justice as are conferred upon them by statute.*"

As was said by Mr. Justice Williams in the opinion of the Appellate Division in the case at bar, referring to the "Johnson case," "that was an "action to recover real property; this is one to re-"cover personal property — in form, in equity. "But the principle is the same in both actions." (Fol. 525.)

In view of the foregoing, it would seems to be unnecessary to discuss this proposition further, and, if this court upholds the contention of the defendant that neither the Indian tribe nor any of its individual members has the legal capacity to sue, all the plaintiffs, with the exception of the University of the State of New York, are eliminated from the action.

IV.

None of the parties named as plaintiffs ever authorized the commencement or maintenance of this action and not one of said alleged plaintiffs has any real interest in this action, or in the subject-matter thereof.

That the alleged plaintiffs never authorized the commencement of this litigation and are not the

real parties in interest therein is one of the material issues expressly raised by the answer of the defendant.

Paragraph 11 of the answer reads as follows:

"And for a further and separate answer and "defense to the complaint herein the defendant "alleges, upon information and belief, that neither "the Onondaga Nation, so-called, nor Te-hes-ha, so-"called, whose names are inserted as plaintiffs in "the complaint in this action, *have any real inter-"est in this action or the subject-matter thereof, "and that no authority was ever given by either of "said alleged plaintiffs to any persons to com-"mence the action.*" (Fols. 75-76.)

While the foregoing allegation refers specifically to the original plaintiffs, the order of the Appellate Division hereinbefore referred to makes it applicable to the additional plaintiffs brought in at the time of the trial "by adding an allegation that the "plaintiffs now named as parties to this action, "*including the plaintiffs brought in* by said order "of the court, *have no real interest in this action "or the subject-matter thereof, and that no author-"ity was ever given by those plaintiffs to commence "the action.*" (Fol. 513.)

That the University of the State of New York disclaims responsibility for the commencement or maintenance of the action in its name or behalf seems to be conceded by the record in this case. (See page 182.)

On March 14, 1901, the Regents passed a resolution, of which the following is a copy:

"Voted, That in the case of the Onondaga Na-"tion v. John Boyd Thacher, the attorney for the "plaintiff be requested to state to the Court of

"Appeals that he was under a misapprehension "in supposing that he had received authority "from the Regents to make the University of the "State of New York a party to the suit.

"A true record.

"Attest:

"J. R. PARSONS, Jr.,
"Secretary."

The foregoing declaration was evidently intended to be a mild form of expressing the fact that the University of the State of New York had never authorized the use of its name as a party to the action. It certainly cannot be construed otherwise than as a direction to the plaintiffs' attorney to discontinue all further prosecution of the same in its behalf.

Assuming, however, that the other plaintiffs have the right to maintain any action, the issue having been raised by the pleadings that they are not the real parties in interest and had not authorized the commencement of the suit, the burden of proof rested upon them to sustain the allegations of the complaint in respect thereto. They have not only failed to submit any evidence to support such allegations, but, on the contrary, the defendant has, by positive proof, corroborated by the testimony of the original plaintiffs, shown that the real party in interest is a woman named Harriet Maxwell Converse. The defendant has affirmatively shown that Mrs. Converse was never legally authorized to demand the delivery of the belts of wampum and the payment by the defendant of the sum of $500 for the detention thereof, as alleged in the complaint. (Fols. 40 and 49.)

These allegations of the complaint are denied in the following paragraphs of the answer:

Paragraph 8. "The defendant specifically de-"nies * * * that before the beginning of this "action the Onondaga Nation and the plaintiff, "Te-hes-ha, on behalf of all of the Ho-de-na-sau-"nee, as well as himself, or either of said parties, "demanded of the defendant the delivery of said "belts of wampum." (Paragraph 8 of answer, fol. 74.)

Paragraph 9. "The defendant denies, on in-"formation and belief, that at and by a governing "council of the Onondaga Nation, regularly con-"vened, Harriet Maxwell Converse, of New York "city, was, prior to the beginning of this action, "regularly appointed the agent and attorney in "fact of the said nation to recover said wampum." (Paragraph 9 of answer, fol. 75.)

Notwithstanding the fact (as appears by the original title of the action) that a "NATION" is one of the plaintiffs, and is president, acting individually, is the other, the latter did not in either his individual or representative capacity verify or sign the complaint. Neither has any of the plantiffs or any official representative or member of any of the tribes or nations mentioned in the title exercised any such authority.

According to the allegations of the complaint, the right to commence this action and verify the complaint was conferred upon Mrs. Converse abov referred to by a power of attorney, the validity of which is denied by the defendant, as above set forth.

The name Te-hes-ha, which appears in the title of the complaint, is, as has been hereinbefore stated, the Indian appellation of Daniel La Forte, an

Onondaga Indian, who, when this action was commenced, was living on the Onondaga Reservation and president of the Onondaga Nation. (Fols. 184, 188, 192, 197 and 362.)

According to the statement made by the plaintiffs' attorney at the time of the trial the plaintiff, Te-hes-ha, was unable to be present in court on account of illness. (Fol. 198.) It was further stated that he was then dying (fol. 181), and it appears from the record that he has since died. (See finding of fact XIV, fol. 97.)

On the trial there was introduced in evidence a duly authenticated written statement over the signature of Mr. La Forte, dated the 30th day of August, 1897, that is, after the alleged demand for the delivery of the wampums, in which he expressly disavows any intention on his part of bringing any action for the possession of these wampum belts. (Fols. 367-369, 370-383.)

He stated that the defendant came honestly and fairly in possession of the wampums through a source of title the same as that from which Mrs. Converse derived her title to similar belts, which she subsequently sold to the University of the State of New York. He also stated that Mrs. Converse had no legal authority to represent the Onondaga Nation in the matter or to demand the delivery of the wampum belts in its behalf, or in behalf of the Six Nations, or any of the nations of which the leauge was composed, a copy of the alleged demand, dated August 17, 1897, being annexed to the statement.

He also made the following explanation of the reason why the alleged power of attorney to Mrs. Converse could not be regarded as a valid instrument, viz.: That there are twenty-three chiefs of

the Onondaga Nation, of which twelve constitute a quorum; that, at the urgent solicitation of Mrs. Converse, he, as president, summoned the chiefs together, but only five (that is seven less than a quorum) attended; that there being less than a quorum present the meeting was adjourned without transacting any business, and, therefore, did not, and could not have authorized the execution of any legal power of attorney." (Fols. 374-384, and Defendant's Exhibit "A.")

On the trial of the action there was introduced in behalf of the plaintiffs, the Constitution of the Onondaga Nation, adopted on the 9th day of July, 1896, in which it is stated, in paragraph second, that eight of the sachem chiefs shall constitute a quorum for the transaction of national business. (Plaintiffs' Exhibit "D," fol. 449.) There was also introduced on behalf of the plaintiffs the alleged power of attorney, dated July 13, 1897, and purporting to have been signed by seven persons, including one who signs himself as "Marshal of "the Nation." (Fols. 456-458.) Whether, therefore, twelve or eight constitute a quorum for the transaction of business, it appears that less than either number signed the document, and presumably less than either number was present at the meeting, for the reason that all those present signed the paper.

It appears that Mrs. Converse, accompanied by a Mr. Richmond and the plaintiffs' attorney of record in this case, went to the house of Daniel La Forte, on the Onondaga Reservation, without any invitation from anybody connected with the Onondaga Nation, assembled six or seven of these Indians, and obtained their signatures to the alleged power of attorney. (Fol. 445.) The trans-

action, as described by Mr. Richmond in his testimony on the trial, corresponds in all its essential features with the version of Mr. La Forte, in his statement above referred to, and not only shows that there was no legal authorization for the demand of the wampums or the commencement of this litigation, but that the parties above referred to (Mrs. Converse and Mr. Richmond), have been speculating in wampum belts, purchasing them from the same Thomas Webster, who it is claimed in this suit had not the right to dispose of them, and selling them to the University of the State of New York. (Fols. 446-448.)

V.

None of the Indians, made plaintiffs herein after the commencement of this suit, have or ever had any interest in the ownership of the wampums as individuals, and there is no such identity and community of interest between the plaintiff, Te-hes-ha, or the other individual plaintiffs, and the members of the several Indian tribes whose ancestors constituted a part of the League of the Five Nations and the League of the Six Nations, in having such wampum belts preserved and restored to some custodian as permits the maintenance of this action.

This action was commenced October 9, 1897. (Fol. 1a.)

By the order entered December 20, 1898, making certain Onondaga Indians and others additional

plaintiffs it was provided that the complaint be amended without further service by inserting the following allegation:

"That on the 26th day of February, 1898, the "Onondaga Nation elected the University of the "State of New York to the office of 'wampum-"'keeper,' and by bill of sale sold and transferred "to the University of the State of New York all "its interest in the said wampums." (Fols, 2a, 82.)

If the foregoing is a correct statement of fact, then the transaction above mentioned, by virtue of which it is contended authority was conferred upon the University of the State of New York to appear as a plaintiff in this action, at the same time deprived all its co-plaintiffs of any and every possible interest which they might have claimed in the subject-matter of the action.

There is not the slightest suggestion in the evidence introduced on the trial to indicate that any of these individuals ever had any personal interest in the wampum, or any community of interest with any other person or body of persons, which would justify their appearance, as plaintiffs, either individually or in a representative capacity. But, if they ever had any property right therein, the Onondaga Nation assumed by that transaction to dispose of such interest prior to the date when they were made parties to the action.

If the foregoing action on the part of the Onondaga Nation is to be construed so as to have any effect at all, then the individual Indians thereby cease to have any further interest in the matter. If not, then the University of the State of New York never acquired any interest.

VI.

The plaintiff, herein referred to as the University of the State of New York, has no property right or other interest in the subject-matter of this action sufficient to entitle it to bring an action for the recovery of any or either of the wampum belts.

The only right that the University of the State of New York can claim to be made a party plaintiff in this action is that alleged to have been conferred by virtue of certain proceedings which are alleged to have occurred on the 26th day of February, 1898, that is, several months after the commencement of this action, whereby it will be argued that the University was "raised up" to the position of "wampum-keeper of the Onondaga "Nation," and, as such, authorized to "get possession of and safely keep forever all wampums of "the Onondaga Nation and the Five Nations and "the Six Nations." (Fol. 186.)

Immediately after the adoption of the resolution, which constituted the "raising up" ceremonial, another resolution was adopted, ridiculous as it may appear, which authorized the sale to the University of the State of New York of all wampums for five hundred dollars ($500), and such an alleged bill of sale was subsequently executed by the several persons present, in the presence of Mrs. Converse, the real plaintiff in this action, and a Mr. Richmond. (Fols. 189, 192, 196.)

In other words, the University thereby became the official custodian and also the absolute owner of the property at the same time and by virtue of the same transaction.

But before attempting to prove the validity of the pretended election to the office of "wampum-"keeper" it should have been shown conclusively that there was, as a matter of fact, such an official position in existence. This the plaintiffs failed to prove. Whatever may have been the fact prior to the disintegration of the confederacy, as the result of the campaign of General Sullivan, in 1779, there can be no serious contention that during the period subsequent to the date last mentioned there was any tribal recognition of such a title, so far as it might be connected with the performance of any official functions. In fact, there was no confederacy in existence, and there was no use for such an official.

If, however, it is claimed that the position was, as stated in the resolution, "wampum-keeper of the "Onondaga Nation," then there is no possible authority or precedent for the action of the persons interested in that proceeding, unless it is claimed that the office was created at that time.

But the "wampum-keeper" of the Onondaga Nation could not exercise jurisdiction or control over the wampums, which, it is alleged, were the property of the "Ho-de-no-sau-nee," viz., the "League "of the Six Nations."

It is true that an Indian bearing the name of Baptist Thomas, under objection from the defendant, testified in a disconnected way concerning some wampums which he pretended to have seen in the possession of his grandfather, and, in response to a leading question from the plaintiffs' attorney,

stated that his great-grandfather, whose name was Commissary, was elected keeper of the wampums (fols. 430-434); but the pecuniary interest which this individual had in the matter, as indicated by his testimony on cross-examination, was of such a character that any testimony given by him is worthy of very little credence. (Fol. 439.) Mr. Clark, also under objection from the defendant, gave some hearsay testimony in regard to the appellation of "wampum-keeper" given to Harry Webster, the father of Thomas Webster. (Fols. 173-175.) His knowledge was based exclusively upon statements alleged to have been made to him by Daniel La Forte and Alfred Cusick, who, so far as the testimony seems to indicate, were still alive at that time, but were not produced on the trial of the action. The testimony of the witness being hearsay was, therefore, stricken out. (Fol. 173.)

It was also argued, both at the Trial Term and in the Appellate Division, that in the article on the subject of the New York State Indians constituting a part of the last federal census, which was written by General Carrington, that the latter recognized such an official. Conceding that he did, that is not proof of the existence of such an official. But General Carrington merely alluded to the position in the same manner of Messrs. La Forte and Sanborn referred to it. General Carrington explains the allusion in the census article as follows: "The fact "that the people can have no key to their own laws, "and that the *dictum* of the wampum reader is "binding; just as his memory or interpretation of "the emblems shall dictate, seems to weigh little "with the pagan party. Notwithstanding the "claims made that the wampums can be read as a "governing code of law, it is evident that they are

"simply monumental reminders of preserved tra-
"ditions without any literal details whatever. As
"curious relics they are valuable." (Fol. 316.)

General Carrington also testified in his deposition forming part of the testimony taken on the trial of this action, that there was no such official position as "wampum-keeper;" that Webster called himself wampum-keeper because he had wampums, and Carrington so treated him in his report, but did not *know him officially as such.* (Fol. 230.)

The foregoing is the only testimony in the case, relating to the existence of the position of "wam-
"pum-keeper," except the narratives contained in the books of Messrs. Morgan and Clark, from which extracts were read.

It would seem, however, from the statements of the authors of these books that the position of wampum-keeper, as it existed among the Iroquois Confederacy, was an hereditary title. That it was originally conferred upon Ho-ho-we-na-to, who is sometimes referred to as Hiawatha. It further appears, however, that this title was hereditary among the Indians of the Onondaga Nation. (Fol. 149.) "As a safeguard against continual fraud,
"each sachem was raised up and vested with his
"title by council of all the sachems with 'suitable
"'forms and ceremonies.'" (Fol. 136.) The Indian appellation of the alleged "wampum-keeper,
"Thomas Webster," was not "Ho-ho-we-na-to," but "Ha-yah-du-gih-wash." (See picture opposite page 103 and name underneath.)

But while the office has been abrogated, the honorary title has descended, and according to the testimony of Rev. John W. Sanborn, John Buck, an Onondaga Indian, living in Canada, was, in Octo-

ber, 1891, the hereditary wampum-keeper (the honorary title) of the Six Nations, and had in his possession at the unveiling of the monument of Red Jacket, the Seneca Chief, a large number of wampum belts, some of which appear in the picture entitled "Reading the Wampums," offered in evidence in this case. (Fols. 355-360.)

It would seem, therefore, that there was not in existence at the time of the alleged "raising up," during the month of February, 1898, or for years prior to that time, any such recognized official position, except in the sense that it was applied to any Indian who had wampums in his possession, or applied as an honorary title to the descendants of the original wampum-keeper.

But if there were any such position in existence the University of the State of New York was not in the first place eligible to hold it, because it was a position, the incumbent of which should be selected from the Onondaga tribe of Indians, after due ceremonials recognized by the Indians (page 65 of the League of the Iroquois, by Morgan, Ho-no-we-na-to, note: "This sachem was the hereditary keeper of the wampum"). (Fol. 149.)

Secondly, because the University of the State of New York was not and is not qualified to hold any office, public or private; all the authority with which it is vested being conferred by the University Law, being chapter 378, Laws of 1892, and the Constitution, and the right to hold office is not included in such powers.

But if it were conceded that there was such an office and that the University was eligible to election thereto, there is nothing to show that the persons whose signatures are appended to the minutes of the meeting at which the resolution was adopted

were vested with any authority to elect any person or body to such an office. It does not appear that they are recognized sachems of the Onondaga Nation, or that the Onondaga Nation has the sole power of making the selection for the "Six Nations." In the list of titles of sachems which are said to be hereditary in the Onondaga Nation, as they appear in Morgan's League of the Iroquois, it will be observed by comparing the names subscribed to the minutes of the meeting that there are none of the latter which correspond with the former.

O-NUN-DAH-GA-O-NO, or ONONDAGA NATION.

I. 1. To-d-da-ho. 2. To-nes-sa-ah. 3. Da-at-ga-dose.

II. 4. Ga-nea-da-je-wake. 5. Ah-wa-ga-yat. 6. Da-a-yat-gwae.

III. 7. Ho-no-we-na-to.

IV. 8. Ga-wa-na-san-do. 9. Ha-e-ho. 10. Ho-yo-ne-a-ne. 11. Sa-da-qua-seh.

V. 12. Sa-g-ga-ha. 13. Ho-sa-ha-ho. 14. Ska-no-wun-de.

Page 64 of book offered in evidence.

Unless every Indian living on the Onondaga reservation is a sachem or chief, then there is nothing in the evidence to indicate that either of the persons who signed the minutes has any greater authority than any other Indian of the tribe. But if they had such authority, and the meeting at which they assembled was in every respect held in accordance with the Constitution and Rules of the Nation, it is respectfully submitted that any election or selection of an offi-

cer, public or private, which was accomplished by the gift of money or other valuable consideration as an inducement to the persons having the authority to make the selection to vote for any particular candidate, would be contrary to public policy and void. If the position is to be regarded as a public office, then the means whereby the selection was accomplished, as testified to by Baptist Thomas, one of the persons in attendance at the meeting, and who voted on the resolution, would under section 53 and other sections of the Penal Code, embraced under title VI, be sufficient to have invalidated the act and subjected those concerned to a criminal prosecution. Even the Constitution of the Onondaga Nation condemns practices of this character. In the seventh section of that instrument it is stated as follows:

"Any chiefs or sachems who may received money "by Bribery and said the council shall be the duty "amongst the chief to dispose him." (Fol. 453.) And yet it was admitted by Baptist Thomas that there was paid to the chiefs as an inducement for signing the paper, that is adopting the resolution and executing the bill of sale, the sum of five hundred ($500) dollars; that it was paid by a Mr. Richmond, he and Mrs. Converse being present; that two hundred ($200) dollars was used "for the "Nations expenses," and that the balance, three hundred ($300) dollars, was divided among the Indians who were present, viz.: twenty-five ($25) dollars to each. (Fols. 436-441.)

It would seem that any one of these grounds should be sufficient to justify the court in giving little or no weight to any such testimony, so far as it confers any authority upon the University of the State of New York to appear as a plaintiff in this

action. Furthermore, there is nothing in the case to show that the University of the State of New York has any desire to prosecute this action. It does not appear that either Mr. Richmond or Mrs. Converse have any official connection with that institution, nor has any authority been shown by either to represent it, but it affirmatively appears by the letters of Melvil Dewey, which are contained in the answer and introduced in the evidence on the trial, which were written in response to the letters of the defendant, which are set up in the complaint, that on the 18th day of January, 1897, viz., several months before the commencement of the action, and more than a year prior to the alleged election of the University of the State of New York, that he, as the secretary of the latter institution, was satisfied that Mr. Thacher was the owner of the property and simply proposed that he should sell it to the State for what it cost him. (Answer, fols. 63-71; also, testimony, fol. 199.)

But if, notwithstanding the foregoing, the bill of sale and the proceedings preliminary to its execution were in all respects valid, it is respectfully submitted that it does not include, nor could it include in its terms the property described in the complaint in this action. (Fols. 184-197.) It purports to be a conveyance of "all wampum in belts, "strings or otherwise of which it (the Onondaga "Nation) ever had in possession, or was entitled "to the possession of, and all its right, title and "interest to any and all wampums anywhere in "consideration of five hundred dollars." (Fol. 189.) And, "it is hereby made the attorney in fact "of the Onondaga Nation and the individual "sachem chiefs who are here irrevocable, but at its "own cost and expense, to recover possession of the "said wampums by suit or otherwise in the name

"of the Onondaga Nation or *of all or any of the "sachems undersigned, either as such sachem "chiefs or individuals."* (Fol. 193.) It appears that none of the sachem chiefs whose names are subscribed to the instrument are included among the plaintiffs enumerated in the order bringing in the additional plaintiffs or originally named in the title of this action, except Say-ha-que, or Baptist Thomas, and Te-hes-ha, and the latter has since died.

It, therefore, follows that the alleged power of attorney to bring suit in the name of those present and who signed the document has not been complied with and the additional plaintiffs have no authority in the premises.

But the conveyance is made of such wampums as were in the possession of the Onondaga Nation. presumably as the owner. It is alleged that the wampums described in the complaint were the property of the Six Nations (see Complaint, fols. 43 and 44) and, therefore, the wampums described in the bill of sale are not the same.

But if the theory upon which this action is founded is to be sustained, then neither the Onondaga Nation, nor anybody connected with it, had any authority to dispose of these belts, even assuming that they are included in the description contained in the bill of sale. It is alleged that these wampums were deposited with the Onondaga Nation simply in its official capacity as the "keeper of the Central Council Fire." (Complaint, fol. 6.), and it had no greater authority than Webster, assuming that he was the official wampum-keeper (as alleged in the complaint, but of which there was no proof whatever on the trial), to dispose of them. In other words, if the theory on

which this action is founded is to be sustained by this court, then the University of the State of New York acquired no interest in the property described in the complaint and has none on which it can prosecute this suit. If, on the other hand, notwithstanding what has been stated before, there was a valid bill of sale to the University of the State of New York, then the title of the defendant, acquired in the same manner several years before the alleged sale to the University, was perfectly legal and precluded the parties from making any subsequent sale of the same property.

It will be observed that the proceedings taken on the 26th day of February, 1898, were simply for the purpose of ratifying the sale of other wampums by Thomas Webster to Harriet Maxwell Converse, which have since been purchased by the State of New York, through its University or Museum. According to the testimony of Mr. Richmond (fols. 446-448), there were upwards of ten wampum belts purchased from different Indians by Mrs. Converse and are now in the State Library. La Forte says in his statement that some of them at least were purchased from Webster. (Fol. 375.) If Webster had no right to sell the wampums to General Carrington, he certainly had no right to sell wampums to Mrs. Converse. If the theory of the plaintiffs that they are historical records is correct, then no person had the right to sell them. If, however, he had the right to sell to Mrs. Converse, he had the right to sell to General Carrington. The so-called "ratification" was a useless proceeding. The representatives of the nation, which was simply an official custodian, had no authority to permit him to sell the property. It, therefore, conclusively appears that whatever interest the University of the State of New York may have in other wam-

pums, they have none in that described in the complaint, which had been disposed of more than seven years prior to the execution of the bill of sale to it. So that the very evidence, upon which the University of the State of New York claims to be an interested party, proves conclusively the ownership of the wampums in the defendant.

Although in the order amending the complaint so as to allow the University of the State of New York to appear as one of the plaintiffs in the action, it is expressly provided that the allegations of the complaint shall also be amended so as to show the alleged interest that the University had in order to enable it to so appear, viz., its official capacity as "wampum-keeper" and its ownership by virtue of the bill of sale (fol. 82), it has been suggested since the trial of the action that the University of the State of New York is "the trustee of an express "trust" and is suing as such.

In the title of the action the University of the State of New York is named individually without any designation as "trustee," "wampum-keeper," or otherwise.

There is no allegation in the complaint to support any other claim, and in fact, so far as indicated by the record, it was never suggested until after the appeal was taken.

In the case of Myers v. Machado (6 Abb. Pr., 198), cited by the plaintiffs in error, the capacity in which the plaintiff sued was designated both in the title and the amended complaint. This is the usual, if not the only, way the plaintiff can sue in an official or representative capacity.

Paige v. Fazakerly, 36 Barb., 392.

Trustees of Fire Dept. E. D. of Brooklyn v. Acker, 26 How. Pr., 263.

If this plaintiff is allowed to disguise itself in habiliments selected to suit its fancy on each different occasion that it appears in court and assume a character which it deems to suit the occasion, it may be impossible ultimately for the defendant to recognize it and adapt itself to the change.

It is now also asserted "that the wampums properly pertain to the Indian section of the State "Museum." (See chap. 586 of the Laws of 1896.)

The statute cited provides an appropriation of money to be used for the purpose of "collecting or "buying specimens for the Indian collection" in the State Museum.

That the State of New York or any of its departments has any authority to legislate the personal property of any of its citizens into its custody or possession without due process of law and compensation therefor, is a proposition which requires no argument to refute.

It follows, therefore, that this plaintiff has no standing in court and is not entitled to recover either upon the theory advanced on the trial of the action, or any phase or guise in which it has attempted to masquerade since that time.

VII.

The alleged cause of action set forth in the complaint did not accrue within a period of six years prior to its commencement.

The six year statute of limitations is pleaded, and is, therefore, one of the issues. (Fol. 83.)

The answer was amended by adding thereto the following allegation, viz., "that no part of the

"alleged cause of action accrued within six years "prior to the commencement thereof." (Fol. 514.)

In view of the dismissal of the complaint on other grounds, this question was not considered, although referred to in the opinion of the court. (Fol. 498.)

It appears from the testimony in this case that Thomas Webster parted with the possession and ownership of the property on the 10th day of February, 1891, and that the action was not commenced until the 9th day of October, 1897, a period of almost seven years after the time when the cause of action accrued, so far as indicated by the allegations of the complaint.

In order to avoid the effect of the statute, the attorney for the plaintiffs after several months of investigation obtained from General Carrington a letter to the effect that during a portion of the time at least while he and Dr. Crane were in possession of these wampum belts, a period of about two years, they were not within the State of New York. Assuming that to be so, there is no proof in this case that Thomas Webster ever was the wampum-keeper. The claim of the plaintiffs on the trial of this action was that his father, Harry Webster, who died in 1881, was the last wampum-keeper, and that Thomas Webster obtained the belts from him. It appears, however, from the testimony of General Carrington that he obtained some of them in Canada.

If, however, the contention of the plaintiffs in that respect is substantiated, then the cause of action accrued in 1881, when the wampums passed out of the official custody of the alleged wampum-keeper, a period of eighteen years prior to the commencement of this action. This completely estab-

lishes the defense of the statute of limitations interposed by the defendant and is alone sufficient to entitle the defendant to a dismissal of the complaint.

So far as the present plaintiffs are concerned, the action was not commenced until they were made parties to the action, either on the day of the trial, viz., December 22, 1898, or the date of the entry of the order several months thereafter.

When those who now assume to be the plaintiffs were "brought into" the case there were no plaintiffs. The "Onondaga Nation," one of the original plaintiffs, never had the legal capacity to sue, and Te-hes-ha, the other plaintiff, was dead.

It, therefore, appears that this action was not really commenced until about eight years after the transfer to General Carrington, seven years after the transfer to Dr. Crane, and six years after the transfer to the defendant. From whichever standpoint the cause of action is viewed, it accrued, if at all, more than six years prior to the actual commencement of this action.

VIII.

A demand upon the defendant for the delivery of the belts was a necessary prerequisite to the commencement of the action. No demand therefor was ever made upon the defendant by or in behalf of any or either of the plaintiffs herein.

The defendant also respectfully submits that the plaintiffs have failed to prove a legal cause of action, for the reason that there is an entire ab

sence of any evidence to show that there was any legal demand for the possession of the belts made on defendant, on behalf of the original plaintiffs, or any demand whatever made in behalf of the present alleged plaintiffs.

That a demand is a condition precedent to the commencement of an action of this kind is a proposition which it is not necessary to argue.

Hovey v. Bromley, 85 Hun, 540.

In the case of Gillet v. Roberts (57 N. Y., 28), the Court of Appeals has held that, "a *bona fide* "purchaser of personal property, *wrongfully taken* "*from the possession of the owner, is not liable for* "*a conversion until after demand and refusal.*" (See, also, Truesdale v. Bourke, 145 N. Y., 615.) Upon the theory advanced by the plaintiffs that the property which is now the subject of this litigation was wrongfully taken from the possession of the Ho-de-no-sau-nee, the alleged owner, the defendant, who is conceded to have been a *bona fide* purchaser, is not liable for conversion until after demand. (See discussion of this feature of the case in Mr. Justice Hiscock's opinion, fols. 477-480.)

The plaintiffs' attorney has recognized the necessity of making a demand by alleging it as a fact. (Complaint, fol. 45.) The defendant "specifically "denies that before the beginning of this action the "Onondaga Nation and the plaintiff, Te-hes-ha, on "behalf of all the Ho-de-no-sau-nee, as well as him-"self or either of said parties, demanded of the "defendant the delivery of said belts of wampum." (See Answer, paragraph VIII, fol. 74.)

This question, therefore, was made by the pleadings a material issue between the parties on the trial.

The only proof on the subject of demand was that contained in the written statement over the signature of Te-hes-ha, in which he not only shows for reasons which have already been discussed that the Onondaga Nation never authorized any demand to be made, but also repudiates the assumption of any such authority so far as he is concerned.

In fact, the copy of the alleged demand, which is annexed to the deposition of Mr. La Forte (Te-hes-ha), shows that Mrs. Converse did not even assume to demand the belts in behalf of Te-hes-ha. (Fol. 382.) Her demand was made exclusively on behalf of the Onondaga Nation, which did not then have and has not now, according to the decision in the case of the Montauk Tribe of Indians v. The Long Island Railroad Company (28 App. Div., 470), the legal capacity to sue, and consequently has no right to make a legal demand upon which a suit can be instituted.

The present plaintiffs never made any demand or authorized any person to make a demand, legal or otherwise. That is conceded as a matter of fact. Mrs. Converse does not claim that she represents or represented the University or the additional Indians when she made the alleged demand. There is consequently no evidence of any demand from the present plaintiffs, and, therefore, the complaint should be dismissed for the foregoing reason, if for no other.

The plaintiffs have heretofore contended in one point that "There was a sufficient demand," and in another point contended that a demand was unnecessary.

It appears, not only from the evidence taken on the trial of the action, but also from certain references thereto, in the opinion of the trial court, the

defendant then assumed the latter position. Justice Hiscock refers to this branch of the case as follows: "It is, however, urged that a demand upon "defendant for the delivery of the belts was a "necessary prerequisite to the action. *I think that "view was right in this case, and that no sufficient "one was proved.* In fact, my attention is called "to none at all, and the *argument of plaintiff's "counsel is that none was necessary."* (Fol. 476.)

It is now claimed that the "President of the Six Nations," so-called, had the right to make a demand. The weakness of this claim is the fact that there is no proof that the "President" made or attempted to make a demand, but, on the contrary, it appears that he has repudiated the action of Harriet Maxwell Converse in making the demand either for himself or for the Onondaga Nation, a power which she assumed without any legal authority. (Fols. 374-381.)

For the purpose of showing that the University of the State of New York (which was made a party to the action by virtue of the order made December 20, 1898) demanded possession of the wampum, the correspondence between Melvil Dewey, secretary of the Board of Regents, and the defendant, set forth in the complaint and answer has been heretofore referred to.

The first objection to this proof being considered evidence of a demand is that the correspondence occurred in December, 1896, and January, 1897 (fols. 64-71); that is, two years before the University was made a party, and one year before its alleged election to the office of wampum-keeper, which is supposed to have occurred in March, 1898. (Fol. 184.) In other words, a demand is now

claimed to have been made from one to two years before any possible authority for that purpose was conferred, or is alleged to have been conferred upon the party making the demand.

In the second place, it appears from the letter written to Mr. Thacher by Mr. Dewey January 18, 1897, that it was the understanding of Mr. Dewey that the wampums were purchased by Mr Thacher personally, and "not as the agent of the "State." In other words, it is conceded by the secretary of the "University" that they were the defendant's private property, but it was suggested that Mr. Thacher might be willing to give them to the State, or allow the State to purchase them upon paying to him the same price that he had paid for the property.

An admission by this plaintiff, through its chief executive officer, that the property belongs to the defendant, and requesting the latter to present it or sell it to the former, can hardly be considered evidence of a demand, even if made after proof that the plaintiff was authorized to make the demand then. The proof was directly to the contrary.

IX.

Chapter 153 of the Laws of 1899 has no application to the case at bar.

If any reference is made to chapter 153 of the Laws of 1899 by the learned counsel for the plaintiffs in error on this argument, the defendant would respectfully submit the following suggestion in reply thereto for the consideration of the court:

The act above mentioned was introduced at the request of those interested in depriving Mr.

Thacher of the possession of the wampum belts which constitute the subject-matter of this litigation, and in its original form was so framed as to accomplish the object. The bill was subsequently amended in the judiciary committee of the Senate by the addition of section 2, which expressly provides that it shall not apply to the belts involved in this action.

The original draft of the bill consisted of the present sections 1 and 3 and was evidently designed to determine certain of the issues herein involved by legislative action. Section 1 contains certain recitals as to the alleged election of the university as wampum-keeper and its acceptance of the office. The alleged fact first recited is certainly not an undisputed fact, as appears from the evidence in this case. But on the contrary the trial court expressly held that the University of the State of New York was never elected to the position of wampum-keeper. (Finding of Fact XX, fol. 114.) The Appellate Division in commenting on this branch of the case uses the following language, viz.: "It seems to us ridiculous, however, to say "that it could be constituted a wampum-keeper of "any Indian tribe or confederacy. It was not an "Indian, and had no statutory right or power to "be instituted an Indian or wampum-keeper of "the kind indicated by the evidence given in the "case. This claim is not worthy of any serious con-"sideration." (Fol. 527.) The second recital has such a weak foundation that the learned attorney for the plaintiffs did not introduce or even attempt to introduce any evidence on the trial to support it or make any claim in regard thereto. But if applicable to this case, these recitals would not

even, if this law were to be regarded as a public statute, be entitled to be considered other than as *prima facie* evidence.

"That the preambles to public statutes are admissible in suits between private individuals, as "evidence of the facts recited in them, may perhaps be conceded (Rex v. Sutton, 4 M. & S., 532); "although in such cases the evidence, I apprehend, "is *prima facie* only, and not conclusive. But private statutes have never been held admissible "against parties in no way connected with such "statutes. Evidence of this description was rejected by the Court of King's Bench in the case of "Brett v. Beales (1 Mood. & Mal., 416), although "the act in that case expressly provided, that it "'should be deemed and taken to be a *public* act,' "and should be 'judicially taken notice of as such "'by all judges, justices and others, without being "'specially pleaded.' The objections to such evidence are well stated in the case of Elmendorf v. "Carmichael (3 Litt. R., 472.) The court there "say: 'The facts, recited in the preamble of a "'private statute, may be evidence between the "'commonwealth and the applicant or party for "'whose benefit the act passed. But as between "'the applicant and another individual whose "'rights are affected, the facts recited ought not to "'be evidence. * * * Once adopt the principle "'that such facts are conclusive, or even *prima* "'*facie* evidence against private rights, *and many* "'*individual controversies may be prejudiced and* "'*drawn from the functions of the judiciary, into* "'*vortex of legislative usurpation.* * * * "'Such a preamble is evidence that the facts were "'so represented to the legislature, and not that "'they really existed.' All who are familiar with "the general course of legislation will readily con-

"cur in the conclusion arrived at in this case. It "is true, that in the case before us, we have much "greater reason to place confidence in the accuracy "of the facts recited and assumed in the acts read "in evidence, than in the case of most private acts; "for the reason that here was a body of public offi- "cers called the Commissioners of Forfeitures, "whose special duty it was to inquire into and "ascertain the truth of the representation upon "which the Legislature acted. Still the principle "is not changed. The acts are *res inter alios aca*, "and cannot affect those who are in no manner "parties to them."

McKinnon v. Bliss, 21 N. Y., 206, 213.

The plaintiffs have therefore accomplished nothing by the interference of the Legislature except to disclose the fact that they have little confidence in their ability to sustain the position which they have assumed in regard to the election of the university as wampum-keeper, and the effect of the statute of limitations.

It is simply an illustration of the methods to which those who have institgated this suit have resorted in order to deprive the defendant of his property in violation of his constitutional rights.

If the great State of New York is really a party to this action in the guise of one of its departments, this attempt on its part through its legislative body to seize the property of a citizen purchased by him openly and for a valuable consideration, at a time when that citizen is actually engaged in defending his rights to the property in a court of justice established by its Constitution, should be condemned in the most emphatic terms.

It is a matter of public record, as appears from the statute books of the State of New York (chap-

ter 236 of the Laws of 1892) and Senate document No. 86 of 1894, introduced by the plaintiffs in this action (minutes of testimony, page 6), that John Boyd Thacher devoted months of his valuable time to the service of this State without compensation or the expectation of any pecuniary reward. For the honor and glory of that State he has expended large sums of money from his own private funds. He is now a defendant in a lawsuit purporting to have been brought by the University of the State of New York, and not only subjected to the annoyance and expense of defending his property rights, but he is made the subject of a baseless and yet most base insinuation that he became the possessor of this property in a clandestine manner.

The trial court, in its written opinion, has described the true motives which actuated Mr. Thacher in the transaction (fol. 477), and a special finding to the effect that the purchase on his part was made "as a matter of public spirit," is embodied in the formal decision. (Finding XII, fol. 96.)

X.

No reversible error can be assigned in regard to the rulings of the court in excluding evidence or in the findings of fact or conclusions of law.

All the evidence offered, both by plaintiff and defendant, was received on the trial, subject to the objections interposed, which were passed upon by the court after the submission of the whole case for its consideration. (Fol. 150.)

The evidence objected to by the defendant and excluded, to which exception was allowed, consists either of what clearly appears to be hearsay evidence, attempted to be given by the witness, John S. Clark (fols. 172-175); also comments and conclusions of the author contained in a book entitled, "Clark's History of Onondaga County." The author of the book last referred to is not the same person as the witness Clark. That portion of Clark's "history" excluded appears in Italics (fol. 162), and that part which was admitted is printed in Roman letters. The reasons assigned by the trial justice for his rulings as to this evidence are fully set forth in the opinion. (Fols. 489-492.)

The witness, Clark, attempted to repeat statements made to him by Daniel La Forte and Alfred Cusick, concerning the office or position of "wampum-keeper" (fols. 172-175), for the purpose of conveying the impression that there was in existence such an official position, although it appeared that both La Forte and Cusick were alive at the time of the trial and their testimony was not offered. (Fols. 177, 181.) He also, when recalled as a witness, undertook to give a narrative of events, based on information derived from reading history. (Fols. 424-428.) This testimony was clearly inadmissible and incompetent and the objections were properly sustained.

The reading of the matter contained in "Morgan's League of the Iroquois" and "Clark's History of Onondaga County" was objected to on the trial of the action, on the ground that it was incompetent and inadmissible, and not a proper subject or matter for the court to take judicial notice

of, the latter being the ground on which the plaintiffs claim the right to present such matter in evidence. (Fol. 150.)

It is true, as stated by the Court of Appeals, in the case of Howard v. Moot (64 N. Y., 261), that "courts will take notice of whatever ought to be "generally known within the limits of their juris-"diction, and that the history of the Six Nations "of Indians is a part of the history of the State, "of which the court will take notice." In the case cited it became necessary to show the extinction of the Indian title to certain lands in this State. Authentic documentary evidence was produced to prove the fact, and, in addition, the court took judicial notice of the present Indian occupancy, which was limited to the reservation set apart for their use. This was not only a matter of public notoriety, but was a matter of record in the statute books, as stated by the learned court in its opinion.

It does not follow, however, that every statement concerning the traditions, customs and usages of the tribes of which the League was formed, recorded in a local history, and the comments of the author in regard to the same, are entitled to be considered as proof of the facts which such a history purports to describe or relate. The writers referred to cannot, in any respect, be regarded as legal authority, nor can the books from which the extracts are taken be considered of sufficient authority, or the matters to which they relate be held to be of such public importance, weight and knowledge as to enable the court to take judicial notice thereof.

"A local history, *e. g.*, that of Herkimer county, "is not, it seems, admissible in evidence. To war-

"rant its introduction it must relate to such facts "as are of a public and general nature and inter- "est to the whole State."

McKinnon v. Bliss, 21 N. Y., 206, 216.

The same may be said of the History of Onondaga County, above referred to.

Again, in the case of Rowe v. Strong (107 N. Y., 356), it was held, for the same reason, that "Thompson's History of Long Island" was incompetent to prove that possession of land by one person antedated by another person.

Upon the argument in the Court of Appeals counsel for the plaintiffs in error assumed that the Trial Court had in the fifth finding of fact upheld his contention that the wampum, at some time in the distant past, constituted the official records of the Iroquois Confederacy, but upon examination it will be discovered that the court in the fifth finding, by the use of the words "the foregoing purposes," expressly referred to the third finding, which declares that the Indians of which the tribes were composed and not necessarily the league in its official capacity made use of the wampum for the purposes therein mentioned. Any other construction would necessarily be in conflict with all the other findings of fact and the judgments of the several courts based thereon.

But assuming that they were once the property of the league, it appears by the findings of fact numbered VI-IX inclusive, that Thomas Webster, from whom the defendant's source of title is derived, became the absolute owner thereof and he subsequently sold and conveyed them to the defendant in error. (See finding XI.)

But even if this court should "think the position of the State court an unsound one," it will not take

jurisdiction of the case unless a federal question is involved. (See cases cited in Point I of this brief.)

De Saussure v. Gaillard, 127 U. S., 216.
Quimby v. Boyd, 128 id., 488.

XI.

The Writ of Error heretofore granted herein to review the decision of the Courts of the State of New York should be dismissed.

JOHN A DELEHANTY,
Attorney for Defendant in Error,
Albany, N. Y.

Supreme Court of the United States.

No. 234.—October Term, 1902.

The Onondaga Nation et al., Plaintiffs in Error, vs. John Boyd Thacher. } In error to the Supreme Court of the State of New York.

[April 27, 1903.]

This action was originally brought by the Onondaga Nation and Te-has-ha, an Onondaga Indian. Subsequently several other Onondaga Indians, one Seneca Indian, a Cayuga Indian and the University of the State of New York were made additional plaintiffs. The ultimate object of the action was to recover from the defendant four wampum belts, to which defendant asserted ownership by purchase, but which were averred by the plaintiffs to be the property of a league or confederacy of Indian tribes, known as the "Ho-de-no-sau-nee." The Onondaga Nation, through an officer selected by it, was averred to be the lawful keeper or custodian of said belts. The league or confederacy referred to was also at one time known as the Iroquois Confederacy, as the Five Nations (consisting of the Mohawk, Onondaga, Seneca, Oneida and Cayuga tribes) and, after the Tuscarora Nation of Indians came into the league, as the Six Nations. By an amendment to the complaint it was alleged that on February 26, 1898, "the Onondaga Nation elected the University of the State of New York to the office of wampum keeper, and by bill of sale sold and transferred to the University of the State of New York all its interest in the said wampums;" and the right to the custody of the belts was alleged to be in said University. These wampum belts were thus described:

"One belt of dark wampum beads representing the confederation organization of the Five Nations under Hiawatha; one belt representing the first treaty stipulation between the Six Nations and General George Washington, picturing in wampum beadwork the council house, General Washington, the O-do-ta-ho, or president of the tribes, and thirteen representatives of the colonies; also two fragments of other belts, one representing the first approach to the Indians of the 'people with white faces,' and the other a narrow belt representing the unity of the Five Nations."

The complaint contained no allusion to the Constitution, treaties or statutes of the United States.

In substance the answer contained a recital of the facts connected with the purchase of the belts, and it was asserted that absolute ownership thereof existed in the defendant.

The action was tried at a special term of the Supreme Court of Onondaga County, New York. After the introduction of oral and documentary evidence, the court filed findings of fact and conclusions of law. The defendant was found to be the absolute owner of the property in question the Onondaga Nation was held not to have legal capacity to sue; the University of the State of New York was decided not to have such interest in the subject matter of the action as entitled it to bring an action for the recovery of any or either of the wampum belts; and the individual Indians made parties plaintiff were adjudged not to possess such a community of interest with the members of the various tribes constituting the league or confederacy which it was alleged originally owned the belts, as to permit the maintenance by them of the action. Beyond statements made in testimony or in recitals of historical facts showing that the general government had made treaties with the confederacy of the Six Nations and with certain of the tribes which had composed the confederacy, and that said treaties had been evidenced by the exchange of belts of wampum, there was not contained in the evidence or in the findings referred to, or in the judgment rendered or in the exceptions thereafter filed by the plaintiffs to the findings of the court, any allusion to the Constitution, treaties or statutes of the United States.

On appeal the appellate division of the Supreme Court of New York for the fourth judicial department affirmed the judgment of the trial court. An appeal was then taken to the Court of Appeals of the State of New York, and that court affirmed the judgment (169 N. Y. 596) upon the following *per curiam* opinion:

"We think the judgment appealed from should be affirmed, upon the ground that neither the Onondaga Nation nor the individual Indians named as plaintiffs had legal capacity to bring and maintain the action. (*Strong* v. *Waterman*, 11 Paige, 607; *Seneca Nation* v. *Christie*, 126 N. Y. 122; *Johnson* v. *Long Island R. R. Co.*, 162 ib. 462.)

"As to the University of the State of New York, one of the plaintiffs, the finding of fact by the trial judge, 'that the University of the State of New York never purchased any or either of the wampum belts mentioned and described in the complaint, and that said University of the State of New York never was selected or "raised up" to the position or office of "wampum keeper," and no official proceedings were ever begun on the part of any of the tribes of Indians which formerly composed the Iroquois Confederacy for the purpose of conferring any such position or office upon said University of the State of New York, assuming that there is or was, at the time of said alleged proceedings, any such official position,' is supported by evidence, and the judgment having been affirmed at the appellate division, it is, therefore, conclusive upon us."

The record and the proceedings in the cause having been remitted to the Supreme Court of Onondaga County, and the judgment of the Court of Appeals having been made the judgment of the lower court, a writ of error was allowed to review this latter judgment.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The jurisdiction of this court to review the judgment complained of is controlled by section 709 of the Revised Statutes. Now, so far as we have been able to ascertain from a careful examination of the record there was not drawn in question in the courts of the State of New York in the case at bar, in any manner, the validity of a treaty or statute of, or an authority exercised under, the United States, and the courts of the State of New York rendered no decision against the validity of any such treaty, statute or authority. Nor is there anything contained in the record to indicate that there was drawn in question in the State courts the validity of any statute of, or the validity of an authority exercised under, a State, and necessarily there was no decision sustaining the validity of any State statute or authority exercised under a State, alleged to be repugnant to the Constitution, treaties or laws of the United States. Neither can we find anything in the record to warrant the contention that the plaintiffs in error ever, specially or otherwise, set up the claim in the course of the litigation in the courts of New York, which is under review, any title, right, privilege or immunity under the Constitution, or a treaty or statute of, or commission held or authority exercised under, the United States.

There are no formal assignments of error in the record or in the brief of counsel for plaintiffs in error. It is, however, asserted in such brief that a Federal question arises upon the record because of the ruling by the Court of Appeals of the State of New York, that "there was evidence supporting the finding of fact by the trial judge that the University of the State of New York never purchased any or either of the wampum belts mentioned and described in the complaint, and that said University of the State of New York never was selected or 'raised up' to the position or office of 'wampum keeper,' and no official proceedings were ever begun on the part of any of the tribes of Indians which formerly composed the Iroquois Confederacy for the purpose of conferring any such position or office upon said University of the State of New York, assuming that there is or was, at the time of said alleged proceedings, any such official position."

Referring to this ruling of the Court of Appeals of New York, counsel for plaintiffs in error say:

"It is plain that this is a holding that the Council of the Onondagas *had no power* to select a depositary for the wampums. It is not that the University could not take, could not act and could not sue, but '*that it never was selected*' for the position of wampum keeper. As the action of the Council *selecting* it, or *voting its selection*, is admitted on the record, this can only mean that the action of the Council of the Onondagas *was void as beyond its power*, and thus the Federal question is right up, because the case was decided by the Court of Appeals upon that question *solely*."

But, even if the quoted matter is susceptible of the construction that it adjudged that the Council of the Onondaga Nation of Indians did not possess the power which it is claimed they attempted to exercise in 1898, to select the University of the State of New York as the depositary for the wampums, it is not apparent, and no reason has been advanced which enables us to discover how a Federal question can be evolved from the holding referred to which would entitle us to review the judgment below. Certainly, the Court of Appeals of New York did not suppose that a Federal question was lurking in the record presented for its consideration.

In any event, as we find that no claim of Federal right was specially set up, or called to the attention of the State court in any way, we are without jurisdiction to review the judgment of the State court. (*Telluride Power Transmission Co.* v. *Rio Grande Western Railway Co.*, 187 U. S. 569, 580.)

Writ of error dismissed for want of jurisdiction.

True copy.

Test:

Clerk Supreme Court, U. S.